

March 31, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERROD, TEED, VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

MARCH 31, 2022

APPEARANCES:

For the Corey M. Stern
Plaintiffs: Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

Moshe Maimon
Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

Melanie Daly
Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

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TO OBTAIN A
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TRANSCRIPT:

JESECA C. EDDINGTON, RDR, RMR, CRR, FCRR
FEDERAL OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
200 EAST LIBERTY STREET
ANN ARBOR, MICHIGAN 48104

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1 For the VNA
Defendants:

Daniel Stein
Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020

James M. Campbell
Campbell Conroy & O'Neil, P.C.
1 Constitution Wharf, Suite 310
Boston, Massachusetts 02129

Marcus Christian
Mayer Brown LLP
1999 K Street NW
Washington, District of Columbia 20006

Mark R. Ter Molen
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

Cheryl A. Bush
Bush, Seyferth PLLC
100 West Big Beaver Road, Suite 400
Troy, Michigan 48084

13 For the LAN
Defendants:

Wayne Brian Mason
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

David C. Kent
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

Tory Finley
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

Philip A. Erickson
Plunkett & Cooney
325 East Grand River Avenue, Suite 250
East Lansing, Michigan 48823

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P R O C E E D I N G S

THE CLERK: Calling Sherrod, Teed, Vanderhagen and Ware vs VNA and LAN.

THE COURT: Thank you. Could we have appearances, please.

MR. STERN: Good morning, Your Honor. Corey Stern and Moshe Maimon for the bellwether plaintiffs.

THE COURT: Thank you.

MR. CHRISTIAN: Good morning, Your Honor. Marcus Christian, Cheryl Bush, and Daniel Stein on behalf of VNA.

THE COURT: Thank you.

MR. MASON: And Wayne Mason, Phil Erickson, and David Kent on behalf of LAN, Your Honor.

THE COURT: Okay. Thank you. And please be seated. And I want to welcome our special guests in the back. It's so good to see you.

And, yes, we have Mr. Walling.

And for our guests, this is the former mayor of Flint. So he's been on the witness stand since Monday. Thank you. Okay. I'm just logging in. I want to see how we're doing with members of the jury.

Sure was a windy morning, but that shouldn't block travel. They're all here.

MR. CHRISTIAN: Your Honor, before we bring in the jury, there's a matter we'd like to bring up with you.

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1 THE COURT: Okay. What is that?

2 MR. CHRISTIAN: That's related to the lawsuit by the
3 plaintiffs against Mr. Walling. We wanted to raise a few
4 points that support our position that we should be able to
5 address that with Mr. Walling.

6 THE COURT: Okay. Let me just say what struck me
7 yesterday -- and correct me if I'm wrong -- but I thought
8 there was a motion in limine that you filed that said you
9 didn't want any mention of the settlement, because it could
10 potentially prejudice you.

11 Because jurors could wonder, "Well, why didn't you
12 settle?" You know, could get mad at your client.

13 So I do recall that. Am I mistaken about that, about
14 just that?

15 MR. CHRISTIAN: That is -- there is a motion in
16 limine with respect to that, Your Honor.

17 THE COURT: And it was filed by you?

18 MR. CHRISTIAN: It was filed, yes.

19 THE COURT: Okay. And then in that motion, if I'm
20 not mistaken, it also said you were seeking to have no mention
21 of other cases, other than these four cases.

22 Do I have that totally wrong?

23 MR. MAIMON: That's absolutely correct, Your Honor.

24 THE COURT: Okay. Because I just want to tell you
25 I'm not trying to be difficult with these rulings at all.

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1 Believe me and hear me. I'm not trying to be difficult. I'm
2 trying to follow the previous motion practice, the decisions
3 made, the efforts undertaken to protect everyone's rights,
4 including your clients'.

5 So tell me why you now want to set that aside and
6 bring in other aspects of the litigation that you previously
7 filed a written motion seeking to exclude?

8 MR. CHRISTIAN: So, Your Honor, the distinction I
9 would draw, and I appreciate your pointing out that
10 perspective, is that in this instance, we're not talking about
11 what procedurally happened. We're talking about substantive
12 evidence. We're talking about --

13 THE COURT: Well, it's not --

14 MR. CHRISTIAN: Actually --

15 THE COURT: If I recall my civil procedure, it's not
16 evidence that he was sued. It's allegations.

17 MR. CHRISTIAN: Yes.

18 THE COURT: Okay.

19 MR. CHRISTIAN: And that's where we were headed, Your
20 Honor. The plaintiffs made specific allegations with respect
21 to Mr. Walling. And where we were headed was to mention some
22 of those -- some language from some of those specific
23 allegations. That's what we would like to be able to --

24 THE COURT: And what is that going to -- help me to
25 make sure I understand. Because I was listening carefully as

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1 I could yesterday.

2 I believe what you're doing now is cross-examining
3 Mr. Walling in an effort to make your nonparty at fault case
4 against him. VNA's case of negligence against Mr. Walling.

5 Is that what you were doing?

6 MR. CHRISTIAN: Your Honor, we are cross-examining
7 Mr. Walling for a number of reasons. One of them is to
8 address the evidence that was offered during his testimony
9 with the plaintiffs. So that may be impeachment. It may be
10 offering additional evidence to complete the picture.

11 It may be talking about -- examining Mr. Walling for
12 evidence with respect to other nonparties at fault.

13 So it is very broad. And you may recall that during
14 Mr. Stern's testimony -- or excuse me -- not his testimony,
15 but during his examination, he blurted out, "They're trying to
16 blame you."

17 THE COURT: Right.

18 MR. CHRISTIAN: Right. And you can't say strike that
19 and pull it out. It was here, whether it was sustained or
20 not.

21 THE COURT: No. But that was the opening, the
22 colossal failure of government. All of what's on the VNA
23 Twitter feed that I've now explored in depth tells me -- I
24 mean, it was in the opening. So the jury heard it. They
25 didn't first hear it from Mr. Stern.

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1 They first heard it from Mr. Stein that VNA has a
2 case against the government officials who were -- am I
3 mistaken?

4 MR. CHRISTIAN: That is true, Your Honor.

5 THE COURT: Okay.

6 MR. CHRISTIAN: But government officials are not a
7 monolith. Mr. Walling's role, as he testified, and I think
8 that testimony they tried to elicit, is that he had a very
9 different role than other people.

10 He says he did not know certain things at certain
11 times. So his role may be different from Governor Snyder's,
12 which is different from Howard Croft's.

13 THE COURT: Of course.

14 MR. CHRISTIAN: So Mr. Stein making that statement
15 does not necessarily mean that for each and every individual
16 who's in the government, they had the same role.

17 THE COURT: Not the same role. But what we're
18 talking about is there anything wrong with Mr. Stern reminding
19 the jury of the defendant's opening, theory of the case, which
20 is that it's Mr. Walling and Snyder.

21 But are you still pursuing your nonparty at fault
22 case against Mr. Walling?

23 MR. CHRISTIAN: We are pursuing our nonparty at fault
24 against city government. The verdict form hasn't been spelled
25 out. So we don't know how you'll list it on the verdict form.

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1 THE COURT: I'll list --

2 MR. CHRISTIAN: We're not here to argue that, of
3 course.

4 THE COURT: I don't have an interest in the verdict
5 form other than that it -- the parties -- I mean, I have a
6 tremendous interest in it.

7 But what I will look for first is an agreement
8 between the parties. I'll check it against the allegations in
9 the lawsuit as it stands now. The filings of nonparty at
10 fault as they stand.

11 I mean, I'll check it. But I wouldn't know for sure
12 if you're still pursuing your case against Mr. Walling. But
13 the fact is you are. You've just told me. And Ms. Bush is
14 nodding like this.

15 And so --

16 MR. CHRISTIAN: And what I would say further --

17 THE COURT: He's talking.

18 MR. CHRISTIAN: I'm taking the position -- we're
19 taking the position that this is substantive evidence, which
20 the law supports --

21 THE COURT: But okay. The lawsuit -- the lawsuit --
22 just a minute.

23 MR. CHRISTIAN: Okay.

24 THE COURT: When you're saying, "This is substantive
25 evidence," what you're telling me is the lawsuit that

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1 Mr. Stern and Mr. Maimon filed in 2017 that -- where the
2 claims against Mr. Walling have been resolved --

3 MR. CHRISTIAN: No, Your Honor. I'm not saying that.
4 I'm saying the assertions, the allegations are substantive
5 evidence. Because admitted against the plaintiff because that
6 was the offered them.

7 And so that's what we're saying, Your Honor. Because
8 we not only have to introduce evidence or intend to introduce
9 evidence with respect to the nonparties at fault. We also
10 have to or plan to introduce with respect to the plaintiff.

11 So the plaintiff is an adverse party who introduced
12 -- who made allegations that are admissible. And we -- it is
13 our position that we should be able to introduce those to
14 prove our case.

15 MS. BUSH: May I add something, Your Honor?

16 THE COURT: Sure.

17 MS. BUSH: Thank you, so much.

18 The allegations as to Mayor Walling that are in
19 plaintiffs' complaint are judicial admissions by the
20 plaintiff. And we are entitled to show the jury that it's not
21 just us who blames Mr. Walling, but that the plaintiffs do,
22 too.

23 THE COURT: What? I'm sorry. I didn't really hear
24 you.

25 MS. BUSH: I will take off my mask.

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1 THE COURT: Okay.

2 MS. BUSH: The admissions that the plaintiffs have
3 made, the allegations of the complaint where they made
4 specific allegations as to Mayor Walling, those are judicial
5 admissions.

6 THE COURT: Okay. So it's a statement of a party
7 opponent.

8 MS. BUSH: And so what those go to show exactly by
9 the plaintiffs, those particular allegations of the complaint,
10 not the filing of the complaint, but those particular
11 allegations that the plaintiffs made are judicial admissions.

12 And we're entitled to show the jury that not only do
13 we hold Mr. Walling accountable, but so did the plaintiffs and
14 so do the plaintiffs.

15 THE COURT: And then we'll bring in the settlement to
16 say they're no longer pursuing claims against him. They've
17 resolved them all to everyone's satisfaction.

18 MS. BUSH: I believe, Your Honor --

19 THE COURT: Which is exactly what you told me you
20 didn't want me to do. And Mr. Ter Molen is saying, "Don't do
21 it."

22 MS. BUSH: I would say, Your Honor, that some
23 evidence is admissible for particular purposes under, I think,
24 Michigan law governs this question.

25 And the admissibility of a settlement agreement is

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1 just not admissible for any purpose. But the complaint that
2 they filed where they said all of these terrible things
3 against Mr. Walling, those are judicial admissions that we're
4 entitled to show the jury.

5 THE COURT: Okay. All right. Let me hear a response
6 from Mr. Maimon.

7 MR. MAIMON: Yes. Thank you, Your Honor.

8 So first of all, you can't have everything both ways.
9 Because we're going to be sideways and crooked, and that's
10 exactly the path that the defendants are leading us down.

11 The defendants, by their own admission, even though
12 Mr. Christian didn't want to explicitly state it, are pursuing
13 a claim for nonparty fault specifically against Mayor Walling.
14 It's in their notice of nonparty fault.

15 THE COURT: It is, yeah.

16 MR. MAIMON: And it was in their amended notice of
17 nonparty fault. So to try and -- and we are entitled in the
18 presentation of our proofs to rely on that and to address it
19 and not to wait until they finally make a decision at the end
20 of trial, "Oh, we're dropping that. You couldn't address it
21 beforehand, because we haven't finally decided."

22 We have Mayor Walling on the stand. We have to be
23 able to address it.

24 THE COURT: I'm not concerned about Mr. Stern's
25 mentioning what the jury was told in opening and what I've

1 been told in an amended -- in the original nonparty, the
2 amended nonparty at fault notice. I'm not concerned about
3 that.

4 How are the allegations your clients made against
5 Mr. Walling not a statement of a party opponent?

6 MR. MAIMON: So first of all, there would have to be
7 a foundation to show that these four plaintiffs, not
8 plaintiffs in general, not -- and by the way, the question
9 that was asked is: "Mr. Stern and Mr. Maimon sued you," which
10 is inaccurate.

11 THE COURT: Right.

12 MR. MAIMON: We don't sue anybody. We represent
13 people in litigation. But that's part of the coloring that is
14 attempted here. That that's that.

15 So all we have in the binders is the court and we
16 were provided with was two pages from an amended master
17 long-term -- long-form complaint. The face page and page 16.

18 If we're going to have a complaint put into
19 evidence --

20 THE COURT: Let's put the whole thing.

21 MR. MAIMON: We put the whole thing in evidence,
22 number one.

23 THE COURT: We've got that rule of completeness.

24 MR. MAIMON: Yes. Mr. Mason taught us that. That's
25 number one.

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1 Number two is you can't have it both ways. So you
2 can't say, "Mayor Walling, isn't it true you were sued in this
3 case," assuming that Sherrod, Teed, Ware, and Vanderhagen all
4 were -- had adopted this particular amended complaint, and
5 therefore they would be judicial admissions. Without then
6 saying, yes.

7 And those claims were settled, and here is the
8 settlement. You can't use it as a sword and a shield at the
9 same time. And the motion that they filed to shield the
10 settlement, they can't now say, "Oh, you can't say that you
11 settled, but you can say that you -- this."

12 Because that's giving the jury a false and incomplete
13 picture of what's going on here. And so there are all sorts
14 of things that have to be done before even that could happen.

15 THE COURT: Okay. Let me call upon Mr. Mason.

16 MR. MASON: Thank you, Your Honor.

17 The two are not inextricably intertwined. The
18 reality is it was a motion in limine with respect to
19 settlement is not inextricably intertwined with the admission
20 of the party opponent that was raised by Mr. Stein.

21 It wasn't a factual basis. It was an implication
22 that these people are blaming you. And that's why it's
23 appropriate to have an admission that these plaintiffs adopted
24 the master complaint and sued him himself for that limited
25 purpose.

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1 That doesn't open the door to have to bring in a
2 settlement. Mr. Stern opened the door for a very limited
3 purpose of just fairness when he -- when Mr. Maimon talks
4 about that you can't have it both ways. That's what they're
5 doing.

6 They're trying to open the door and force the
7 settlement in when Mr. Stern, I believe, left the wrong
8 impression in front of this jury to suggest that we were the
9 only ones critical of Mayor Walling.

10 THE COURT: But there is -- the plaintiffs -- do you
11 agree the plaintiffs have no claims against Mayor Walling at
12 this time?

13 Do you agree with that?

14 MR. MASON: I agree with that.

15 THE COURT: Okay.

16 MR. MASON: But that doesn't mean that they didn't,
17 as an admission, that they did at one time do so.

18 THE COURT: Correct. So here's my ruling, which is
19 that I think 801D permits this question about, did you at one
20 time -- were you at one -- we probably shouldn't have
21 Mr. Walling here, because I'd rather that he doesn't -- we
22 don't tell him the answers.

23 Mr. Walling, would you mind stepping out? Thank you.

24 THE WITNESS: Yes. Your Honor, may I ask -- just
25 because I have heard a bit of this exchange.

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1 THE COURT: Yeah.

2 THE WITNESS: The Flint City Attorney's Office has
3 represented me in these civil cases.

4 Is there going to be a need for me to consult the
5 city attorney's office?

6 THE COURT: They are aware of -- I think they're
7 watching on the Zoom, for one thing. But there are no claims
8 for damages against you. They have settled on your behalf
9 with the plaintiffs.

10 The defendants are trying to have the jury find that
11 you're a nonparty at fault.

12 So even if the jury were to find that, it would not
13 be collectible against you. So but could I ask -- but if you
14 want to call your lawyer while you're out, you surely can. I
15 don't want to discourage you from that.

16 And I also am not in a position to give you legal
17 advice.

18 THE WITNESS: No. I understand that, Your Honor.
19 But I was asking about who I was consulting with since they
20 weren't physically here present.

21 THE COURT: Yeah, yeah. So if you could step out.
22 Because I don't want to waste any more time. It's not wasting
23 time to have this discussion.

24 But so here's my thought is that you certainly,
25 Mr. Christian, if in your case and your representation, you

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1 want to bring out that the plaintiffs at one time had claims
2 against Mr. Walling, certainly do that.

3 I think it's absolutely fair then that it be clear
4 what all of the plaintiffs' claims are. So we would just use
5 the entire complaint.

6 That's -- it's going to come out with every single
7 witness. So then pretty soon we're going to have pages 38, 39
8 through Mr. Walling. We're going to have 40 and 42 against,
9 you know, Prysby or whoever it is.

10 So I want you to consider that. But the other is
11 that it absolutely is fair to clarify that they are no longer
12 make -- we don't have to say, "There's a settlement for 600,
13 you know, 26 million." We don't have to say that.

14 But it must be made clear to the jury that they're
15 not still pursuing a case against Mr. Walling.

16 How do you suggest we do that?

17 MS. BUSH: I was going to argue the completeness part
18 of it. And so Marcus has requested that I address the
19 completeness thing.

20 THE COURT: Okay.

21 MR. MAIMON: I thought the Court ruled. Are we going
22 to have reargument now?

23 THE COURT: No. I just want to know how do we make
24 sure that the jury understands that you're not still suing
25 Mr. Wurfel --

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1 MR. MAIMON: Mr. Walling.

2 THE COURT: -- if we don't mention the settlement.

3 All I want is -- you can just say, "Mr. Christian, and isn't
4 it true that plaintiffs are no longer pursuing claims against
5 you?"

6 You could -- that's what I would suggest.

7 MS. BUSH: He could say that. But may I make my
8 record, please?

9 THE COURT: Yes.

10 MS. BUSH: All right. Thank you so much, Your Honor.

11 THE COURT: You're welcome.

12 MS. BUSH: The Sixth Circuit has expressly recognized
13 that a plaintiffs' allegations in a complaint are party
14 admissions --

15 THE COURT: I've ruled that.

16 MS. BUSH: Please. I'm sorry.

17 THE COURT: Okay. Go ahead.

18 MS. BUSH: I understand. I'm sorry if I'm --

19 THE COURT: You're just going over what I already
20 said. But go ahead. Review it again.

21 MS. BUSH: Okay. And in the Barnes case, unless
22 those allegations are amended, they are still considered to be
23 judicial admissions.

24 THE COURT: Correct. We agree.

25 MS. BUSH: And that's even later. And the plaintiffs

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1 never amended to strike --

2 THE COURT: I can't agree more with you.

3 MS. BUSH: Okay. And with respect to the rule of
4 completeness, the rule of completeness does not extend to
5 everything in a document. That's why when a party moves for
6 deposition designations --

7 THE COURT: You make a good point.

8 MS. BUSH: -- the other party only gets to put
9 completeness for that topic. So the rest of the complaint is
10 not admissible with respect to the allegations against VNA,
11 because we're only talking about Mr. Walling.

12 And we intend to introduce into evidence all of the
13 allegations of Mr. Walling against Mr. Walling. And it is
14 complete. I haven't left anything out.

15 THE COURT: I'm just looking up the rule.

16 So, Mr. Maimon, are you -- the thing about -- what
17 are the pages of it? Where is it in the binder?

18 MR. MAIMON: It's Tab 39, Your Honor. And, again, we
19 only have a part of the complaint that they've bothered to
20 show us. They haven't shown us that these four plaintiffs,
21 that this is their complaint.

22 THE COURT: But we're pretty sure this was their
23 complaint.

24 MR. MAIMON: No, we're not.

25 THE COURT: Oh, we're not.

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1 MR. STERN: We filed 32 complaints in federal court.
2 They're named in one or two of the 32. And this is a master
3 long-form complaint.

4 MR. MAIMON: That was amended at some point.

5 MR. STERN: And that was required for people who had
6 not yet filed to check boxes and to file short forms. None of
7 these plaintiffs are on short form complaints that I know.

8 But either way, there's 20,000 kids that have either
9 claims or lawsuits in this case through various pleadings.
10 Just pulling out the master complaint with a different caption
11 on it is not the same as showing that these plaintiffs
12 actually filed against him.

13 THE COURT: The other thing, Ms. Bush, is that
14 there's only paragraph 44 and 45. And paragraph 45 is cut off
15 mid-sentence.

16 MS. BUSH: You mean in the binder?

17 THE COURT: In the binder.

18 MS. BUSH: Okay.

19 THE COURT: Is that what we're using as exhibits or
20 no? This is just --

21 MS. BUSH: There was obviously a page-copying issue.
22 We intend to use all of the allegations against Mr. Walling
23 that are in the long-form complaint which were expressly
24 adopted by --

25 THE COURT: And how many pages do you think that

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1 constitutes?

2 MS. BUSH: It constitutes paragraph 78 of the Walters
3 complaint, paragraphs 85 to 86, paragraph 27.

4 THE COURT: Okay.

5 MS. BUSH: Those paragraphs.

6 THE COURT: Well, the Federal Rule of Evidence 106.

7 "If a party introduces all or part of a writing, an
8 adverse party may require the introduction at that time of any
9 other part or any other writing or recorded statement that in
10 fairness ought to be considered at the same time."

11 MR. MAIMON: So I would say two things. First of
12 all, we can only pose objections, Your Honor. And in
13 fairness, we only should be expected to pose objections with
14 regard to what we're given at the time of trial.

15 THE COURT: Yeah.

16 MR. MAIMON: So telling me abstract paragraphs of a
17 document that I don't have in front of me really doesn't help
18 and puts me in a disadvantage in addressing the issue.

19 MS. BUSH: I have a copy for him.

20 MR. MAIMON: Excuse me.

21 THE COURT: Just a minute.

22 MR. MAIMON: But the defendants raised this issue
23 yesterday with a paragraph and a half at their disposal.
24 That's number one.

25 Number two, with regard to fairness, these are not --

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1 these are allegations made in a notice pleading for a group --

2 THE COURT: I think they qualify --

3 MR. MAIMON: I'm not saying that they don't. But in
4 fairness, to put the entire matter in context, you need to
5 have the whole complaint there.

6 You need to see what -- and you need -- and you need
7 an instruction from the Court, quite frankly, as to what a
8 plaintiff's amended master long-form complaint and jury demand
9 is. Because without that, it's meaningless.

10 Because to the extent that a plaintiff, an individual
11 plaintiff, assuming for the moment that our four plaintiffs
12 here adopted this complaint, you have to give the jury a sense
13 of what does it mean to have a master complaint that
14 plaintiffs, individual plaintiffs, are put in the position of
15 either adopting or not adopting.

16 To simply say that this is their judicial admission,
17 which I'm not arguing the basic tenet, but I'm saying in
18 fairness to simply put this out there that Emir Sherrod's
19 mother sued Mayor Walling on his behalf is misleading.

20 THE COURT: Okay. Let's get the jury in here.

21 Can you ask this question after the next break when I
22 -- because I want to look at these paragraphs, and I don't
23 have them. I have the same thing Mr. Maimon has, which is
24 exactly what's in your binder, which is one-and-a-half
25 paragraphs.

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1 And they're not each the ones you mentioned.

2 MR. CHRISTIAN: We apologize for the mistake, and we
3 will provide the appropriate language.

4 MS. BUSH: Yes. We absolutely will, Your Honor.

5 THE COURT: Okay. Thank you. And then we'll discuss
6 it. So let's get the jury in here. Thank you.

7 And in the meantime, I asked yesterday,
8 Mr. Christian, about whether you or your colleagues here in
9 the courtroom were involved in tweeting from the courtroom or
10 from anywhere during the trial. Making statements. And
11 whether you were involved in the Twitter account called Veolia
12 -- no -- called VNA Flint facts.

13 And you promised that you would let me know.

14 MR. STEIN: Yes. So, Your Honor, I inquired with our
15 team and with all the lawyers working on this case and can
16 confirm that no one is involved with sending out tweets.
17 Certainly from the courtroom but at all. That other lawyers
18 are involved.

19 MR. MAIMON: How is the sidebar information then to
20 be relayed?

21 THE COURT: I looked at that, Mr. Maimon, because I
22 had a lot of concern about sidebars being tweeted. But that
23 sidebar was on the Zoom account.

24 And it was --

25 MR. MAIMON: Oh.

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1 THE COURT: Yeah. So Veolia staff back at Veolia,
2 they're watching. I mean, their names are on the Zoom, and
3 they're watching.

4 So there's a lot of options, because some of the --
5 if a lawyer was involved, then it is prohibited by the
6 Michigan Rules of Professional Conduct to present material,
7 inflammatory material of the nature that VNA -- oh, the jury
8 is here. Let's get --

9 MR. STERN: So the slides were also part of the
10 sidebar? The slides from their opening?

11 THE COURT: Yes. This is what I have to get to. But
12 we'll do that later.

13 Good morning. Good morning.

14 (Jury In)

15 THE COURT: Sorry for the delay for the jury. I
16 promise you we've been working. Please be seated. Oh, we've
17 got to get Mr. Walling back. He's here.

18 Thank you for being back again, Mr. Walling. You're
19 still under oath to tell the truth from when I swore you in
20 Monday.

21 THE WITNESS: Yes.

22 THE COURT: So we're back on Veolia North America's
23 lawyer cross-examining Mr. Walling.

24 So go ahead, Mr. Christian.

25 MR. CHRISTIAN: Thank you, Your Honor.

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1930

1 CROSS-EXAMINATION (continued)

2 BY MR. CHRISTIAN:

3 Q. Good morning, Mr. Walling.

4 A. Good morning.

5 Q. So before we left yesterday, we were talking about GM and
6 its decision to divert a portion of its water supply from one
7 -- from the Flint River to using a DWSD source.

8 Do you recall that?

9 A. Yes.

10 Q. And during your testimony, you mentioned that there are
11 four or five Flint plants in the City of Flint, GM plants in
12 the City of Flint, correct?

13 A. Yes.

14 Q. And when we talked about the specific plant that was used
15 -- going to use DWSD water it said a portion; is that correct?

16 Do you recall that from the exhibit?

17 A. I don't specifically.

18 Can we look back at that exhibit, please, if it's
19 important?

20 Q. Absolutely.

21 So let's see. So VNA Exhibit 5454I, which is Tab 10.
22 And if we look at the text at the paragraph near the bottom of
23 the page that starts with, "The City of Flint has honored,
24 allowing them to divert a portion of their water supply."

25 Do you see that?

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1 And I can read it.

2 A. Yes. I see that now. This is Elizabeth Murphy's
3 suggestions.

4 Q. Right.

5 A. I see "portion," yes.

6 Q. Suggested additions. And you testified yesterday that
7 this was -- this was only one of the GM plants in the City of
8 Flint; is that correct?

9 A. That was my recollection.

10 Q. Okay. So -- and based on your recollection, do you know
11 if in that particular plant if the employees would be
12 continuing to drink the water?

13 A. I don't know. My recollection is that with the city
14 system being switched to, you said technically the Flint
15 Township, which was supplied by the county drain commissioner
16 from DWSD.

17 I'm not aware of other, you know, sources of
18 municipal water going into that plant. I'm also -- I was in
19 the engine plant on a couple of occasions while I was in
20 office.

21 I don't recall how employees or -- I wouldn't have
22 seen kitchens or cafeterias to know if water was supplied
23 differently by the company or not.

24 Q. Sure. So it's fair to say that you don't know whether or
25 not employees at that specific plant were drinking Flint River

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1 water after the change was made in October of 2014; is that
2 fair to say?

3 MR. STERN: Objection. Asked and answered. If they
4 want to bring a plant person who worked here to testify about
5 what they drank, it would be more important than asking a
6 mayor --

7 THE COURT: Okay, okay.

8 MR. CHRISTIAN: I was clarifying whether he knew,
9 Your Honor.

10 THE COURT: And I was looking up something, and I
11 don't recall. See, he says he doesn't recall. So we can move
12 on now.

13 BY MR. CHRISTIAN:

14 Q. Okay. So with respect to the other three or four plants,
15 there was no switch back to DWSD water for drinking water or
16 otherwise; is that correct?

17 A. That's my understanding. That's my recollection, yeah.
18 There are three plants at that -- as we call it, the Flint
19 complex. So someone else could give you a more technical
20 depiction. That's my recollection.

21 Q. Okay. So you can't give me more technical depiction.
22 Thank you.

23 A. I remember the engine plant being discussed.

24 Q. All right. Thank you. So I'm going to show you
25 Plaintiffs' Exhibit 3622, which is already in evidence. It's

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1 Tab 60 in your book. That's already in evidence. So we're
2 going to put it up on the monitor.

3 And during your testimony, you spent some time
4 talking about the invitation to bid in early 2015 --

5 A. Yes.

6 Q. -- for a contract?

7 A. Yes.

8 Q. And you mentioned that the city's resources were restrict
9 -- were restrained, that you needed additional capacity.

10 Do you recall that?

11 A. Yes.

12 Q. And do I recall correctly that you are a consultant
13 yourself?

14 A. I am now. And I was for a bit over a year before I was in
15 office in 2009, yes.

16 Q. Okay. And so you've responded to requests for proposal
17 during your personal business, correct?

18 A. Yes, I have. Not -- yes.

19 Q. And based on your familiarity with this proposal, this is
20 not a contract; is that correct?

21 A. Correct.

22 Q. And the date on this -- do you recall the date of this?

23 A. I recall there was approximately a week or two that
24 allowed companies to bid. So I do not see a date on this. I
25 mean, the city records would certainly show when the purchasing

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1 department released this publicly.

2 That would be a matter of public record.

3 Q. And attached to the invitation to bid, as I believe you
4 testified, is a LAN operational evaluation report.

5 Do you recall that?

6 A. Yes.

7 Q. And that operational evaluation report was about TTHMs; is
8 that correct?

9 A. Yes.

10 Q. Okay. So I would like to take you back for a moment to
11 your testimony yesterday about the MDEQ calling you to a
12 meeting in October of 2014 about TTHMs.

13 A. Yes.

14 Q. Was that the first moment you learned about the TTHM
15 problem in Flint?

16 A. Yes. That's my recollection.

17 Q. And at that time, you understood that was a serious
18 problem, correct?

19 A. Yes.

20 Q. It could cause, among other things, cancer?

21 A. Yes. That language that I believe we read in -- I believe
22 it says "long-term exposure," and then it lists a series of
23 serious health consequences.

24 Q. Now, during that meeting, you understood that it was
25 serious in October of 2014?

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1 A. Yes, I did.

2 Q. And you mentioned in your testimony that your family drank
3 Flint -- drank the water from the Flint River, correct?

4 A. Yes, we did.

5 Q. And you drank it, as well?

6 A. Yes.

7 Q. And when you went home, you told your wife about this TTHM
8 issue?

9 THE COURT: We don't have any -- do we have testimony
10 about his wife already?

11 MR. CHRISTIAN: I'm asking him a question, Your
12 Honor.

13 THE COURT: I mean whether he has a wife. Do we have
14 that?

15 MR. CHRISTIAN: He did testify to that. Yes, Your
16 Honor. Yes he did.

17 THE COURT: All right.

18 MR. CHRISTIAN: And his sons. One, I believe, is at
19 the University of Michigan.

20 THE WITNESS: Yes, yes.

21 THE COURT: Okay.

22 THE WITNESS: A wife and two sons.

23 THE COURT: Good.

24 BY MR. CHRISTIAN:

25 Q. So you told your wife about the TTHM problem?

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1 A. You know, on or about that time, she's continued to be a
2 full-time professor at Albion College. So, you know, I don't
3 recollect that conversation exactly, but yes.

4 Q. Did you tell your sons about the TTHM problem at the time?

5 A. I'm not sure if we talked about it with our kids. We
6 didn't change any -- we didn't change our drinking water habits
7 in the house after that information. We continued to use the
8 water, you know, on a daily basis.

9 Q. And when you -- if I recall correctly, was your mother
10 still alive at the time?

11 A. Yeah. Both my parents were.

12 Q. Both our parents. And they were living in Flint?

13 A. Yes.

14 Q. And they were drinking the tap water at the time, as well?

15 A. Yes.

16 Q. And did you tell your father about the TTHM problem?

17 A. I don't -- I don't recall. I would have at some point. I
18 know you haven't asked me about specific timelines, but we
19 would have talked about it at some point.

20 Q. Thank you for pointing out.

21 So in October of 2014, do you recall whether you
22 talked to your father about the TTHM problem?

23 A. I would have around that time. I think this meeting may
24 have been in the latter part of October. So, you know, you've
25 got October, November.

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1 Q. Sure. And you talked to your mother, as well, or -- yes,
2 your mother, as well?

3 A. I believe I did. I don't recall specific conversations.

4 Q. And during that time, you had weekly meetings with weekly
5 office hours on Wednesday from 10:00 to 12:00, correct?

6 October of '14?

7 A. Yes, yes.

8 Q. And when citizens came in, did you tell them about the
9 TTHM problem?

10 A. I don't recall that I did. We talked a bit about that
11 meeting. You know, my understanding was the levels of TTHMs
12 were expected to be down by the parties in the room, the city
13 staff and the MDEQ. LAN may have also been represented in that
14 meeting. I don't recall.

15 And that there was a plan in place, that there would
16 be notification to the public. So I was pretty -- I felt like
17 that was a good response from what I knew as a mayor, that
18 those steps -- what I heard in that meeting.

19 I understood this was a long-term concern. And I
20 didn't have an immediate kind of, you know, motivation around
21 it. So I guess I'm providing a bit of my thinking at that
22 time.

23 I don't recall when a citizen would have come into
24 the office or, you know, I met them in some other format. I
25 don't recall talking to citizens about TTHMs before the public

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1 notice went out.

2 Q. But you told your parents and other family members before
3 the notice went out.

4 MR. STERN: Objection.

5 THE COURT: I don't think --

6 MR. STERN: He just testified to it. So we're just
7 asking the same question.

8 THE COURT: Yes.

9 MR. CHRISTIAN: Your Honor, Mr. Stern goes over
10 questions, five, six, seven, eight times.

11 THE COURT: Okay. Let's review it one more time.

12 THE WITNESS: I believe I did. But I also don't -- I
13 don't recall it being in the context of, you know, changing
14 how we were using the water or anything along those lines.

15 I mean, yes, there are things you share with a family
16 member about what's occurring just in conversations about what
17 you're working on.

18 BY MR. CHRISTIAN:

19 Q. Thank you. So let's turn to Tab 61, which is Plaintiffs'
20 Exhibit 51.

21 What you are seeing here has already been admitted
22 into evidence, so we're going to put it up on the monitor.
23 Plaintiffs' Exhibit 51.

24 THE COURT: It's on Tab 61.

25 MR. CHRISTIAN: But it's Plaintiffs' Exhibit 51, 5-1.

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1 THE WITNESS: Yes. I have this document in front of
2 me, as well. Thank you.

3 BY MR. CHRISTIAN:

4 Q. So before VNA signed the contract to begin work on
5 February 10 of 2015, are you aware of a kickoff meeting that
6 occurred via phone with Howard Croft?

7 Well, let me represent --

8 A. Yeah, no. I'm thinking back. I don't have a specific
9 recollection of that. I know there were discussions about, you
10 know, we're in discussion with VNA or Veolia, as we said.

11 Q. And so these notes as you see at the top, the date is
12 2-2-15. February 2, 2015.

13 A. Okay.

14 Q. Do you see that?

15 A. Yes, I do.

16 Q. And these, I'll represent to you, are the notes of Depin
17 Chen.

18 Do you recall that name?

19 A. I -- I know I've seen that on emails that we've discussed.
20 I don't recall that name at that time period.

21 Q. So when you testified earlier with Mr. Stern, you talked
22 about wanting to be efficient with resources, correct?

23 A. Yes.

24 Q. And you talked about not wanting to duplicate work.

25 Do you recall that?

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1 A. Yes.

2 Q. But you don't have a specific recollection of everything
3 that was included in the engagement with Veolia; is that
4 correct?

5 A. Correct.

6 Q. And so during this kickoff call or in Mr. Chen's notes, if
7 you look down the page, you'll see the words -- the letters
8 THM. For example if you'll go down to a dash that begins with
9 "Next" --

10 A. Yeah.

11 Q. -- you see, "Next THM February 2015"?

12 A. Yes.

13 Q. And then on the next line, you see, "THM analyzer
14 purchased," correct?

15 A. Yes.

16 Q. So during this kickoff call for the work to be done with
17 Flint, THMs, which is another way of stating TTHMs, was
18 included in these notes, correct?

19 MR. STERN: Objection.

20 THE COURT: What's your --

21 MR. STERN: He testified that he doesn't remember the
22 meeting. He wasn't at the meeting. So the notes may indicate
23 that, and he can ask do these notes indicate that. But
24 Mr. Walling has no idea, because he said he doesn't remember
25 the meeting.

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1 THE COURT: Do you remember a meeting with Mr. Chen?

2 THE WITNESS: No. I'm thinking that I may have
3 known, you know, second- or thirdhand about this type of
4 discussion with Veolia.

5 THE COURT: Okay.

6 THE WITNESS: But I'm just looking at these notes
7 right now.

8 THE COURT: Okay. And, Mr. Christian, is there
9 anywhere on these notes that indicate that Mr. Walling was
10 present on the conference call?

11 MR. CHRISTIAN: No, Your Honor. I'm merely asking
12 Mr. Walling, basically, to use his literacy, which I'm sure is
13 quite advanced, to identify THM in these notes.

14 MR. STERN: Your Honor, I may not be a road scholar,
15 but his literacy is not at issue here.

16 THE COURT: Right. I think you've got to use a
17 different witness to review these notes. So -- because it's
18 not going to help, because he doesn't know if he was even on
19 this call.

20 MR. CHRISTIAN: So what I'll do, Your Honor --

21 THE COURT: I can read them.

22 MR. CHRISTIAN: Given that they're introduced into
23 evidence, I just want to publish the fact that THM is in these
24 notes that are dated February 2, 2015.

25 THE COURT: On a call that Mr. Chen had.

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1 MR. CHRISTIAN: Yes.

2 THE COURT: Okay. Thank you.

3 MR. STERN: We'll stipulate to that.

4 THE COURT: Yeah. Thank you.

5 BY MR. CHRISTIAN:

6 Q. So I'd like to turn to Tab 15, which is Plaintiffs'
7 Exhibit 3194.

8 MR. ERICKSON: I'm sorry. What tab?

9 MR. CHRISTIAN: Tab 15.

10 MR. ERICKSON: Thank you.

11 BY MR. CHRISTIAN:

12 Q. Do you see that? Have you had a chance to turn to it?

13 A. Yes. And I recall we looked at this together.

14 Q. Absolutely.

15 A. Yes.

16 Q. And I just want to clarify.

17 Do you recall Mr. Stern referring to this document a
18 couple of times and saying "February 4"?

19 A. I know I pointed out, because I look at the signature
20 page --

21 Q. Yes.

22 A. -- that the signature page says 10th of February --

23 Q. Yes.

24 A. -- also. And it's a few days of back and forth. But the
25 execution of this contract was February 10.

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1 Q. Okay. Thank you. So what we're going to do, and you may
2 recall the timeline that we started putting together yesterday.
3 We're going to put up the timeline and add to it, "VNA signs
4 contract for Flint work."

5 THE COURT: Can we see the timeline?

6 MR. CHRISTIAN: Yes.

7 THE COURT: You're working on it?

8 MR. CHRISTIAN: Yes, Your Honor.

9 BY MR. CHRISTIAN:

10 Q. Okay. So I next want to go back to something that
11 happened slightly before February 10 of 2015. It's something
12 that Mr. Stern went over with you. And it is in our -- in the
13 exhibit book. I believe it is Tab 62. And that is Plaintiffs'
14 Exhibit 467.

15 A. I have that.

16 Q. Do you see that? Do you recognize that exhibit from, I
17 believe it was the afternoon of Tuesday?

18 A. I do recognize that we looked at this exhibit, yes.

19 Q. Yes. And so the subject says "Water Quality Advisory
20 Report." And we're going to get it up on the screen. Water --
21 excuse me. "Water Quality Advisory Committee."

22 A. Yes.

23 Q. And I believe you testified that you're familiar with the
24 Water Quality Advisory Committee; is that true?

25 A. Yes.

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1 Q. And do you recall when the Water Quality Advisory
2 Committee came into existence?

3 A. In -- it was January/February 2015.

4 Q. Are you sure about that?

5 A. I remember working on the names of who was to be included
6 in January. Again, there would be city records that would
7 show. If you have something to refresh my memory, that would
8 be great --

9 Q. Sure. So but first --

10 A. -- but January/February, that group was considered put
11 together. And at some point, it had a first meeting. First
12 meeting -- I mean, it may have even been early March. It's a
13 process.

14 Q. Sure. It takes a while.

15 A. Yes.

16 Q. And at this point in time on February 6 of 2015, the
17 committee had never met before based on what you just said,
18 correct?

19 A. I'm trying to recall when it first met. It probably
20 hadn't met -- probably hadn't met. But, again, you know, all
21 of our city emails are public record. So there would be an
22 email to these individuals inviting them to participate,
23 inviting them to a venue.

24 I just don't recall if any of that communication had
25 occurred at February 6 or not.

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1 Q. Okay.

2 A. Okay.

3 Q. So whether it had a first meeting or not, Mr. Stern asked
4 you a number of questions about the bullet points on this
5 sheet.

6 Do you remember that?

7 A. Yes, I do.

8 Q. And do you remember the questions taking the form of, "Do
9 you know if anyone at VNA, anybody at VNA had ever talked to
10 you about testing labs that the city had at the water treatment
11 facility," or something of that form, similar form?

12 A. I remember, yes.

13 Q. And he started, if you recall correctly, with the top one
14 and went down to the next one. All the way down.

15 All six bullet points, right?

16 A. I remember going through these bullet points, yes. Yes, I
17 do.

18 Q. It was at the end of the day, right?

19 A. I know there's a record, so.

20 Q. Sure. So and just to be clear, do you remember anybody at
21 VNA on February 6, on February 10, on March 25, telling you
22 about testing?

23 And I'll give you a specific question if you'd like.

24 A. I think that would be helpful.

25 THE COURT: Let's let him answer that question before

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1 another one comes up.

2 THE WITNESS: Oh, I see.

3 THE COURT: Go ahead.

4 MR. CHRISTIAN: Here's the question --

5 THE COURT: Let him answer your question.

6 Do you remember anybody from VNA on these three
7 different dates talking to you about testing.

8 THE WITNESS: I'm trying to recall my testimony over
9 now three days.

10 THE COURT: No, just if you remember now. Not --

11 THE WITNESS: So if I was asked if I was contacted by
12 Veolia on February 6 about these bullets?

13 BY MR. CHRISTIAN:

14 Q. About water testing.

15 A. I mean, if we're getting into very specific February 6,
16 February 7, my notes might be helpful in describing when I had
17 those interactions.

18 I don't know if -- I mean, before the kickoff
19 meeting, which we looked at where we were all in a room
20 together, I don't think I had direct -- I don't recall direct
21 interaction with Veolia on any matter --

22 Q. Okay. So --

23 A. -- before the kickoff. That wasn't my -- that wasn't my
24 role or responsibility.

25 Q. So as of February 6, is it fair to say that you hadn't met

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1947

1 anyone from Veolia?

2 A. Again, if there was a meeting that I'm not remembering
3 that happened about that same time, I remember meeting
4 individuals at that kickoff meeting that we saw pictures of.

5 Q. And so if you hadn't met anyone from VNA at that point,
6 they couldn't have told you anything about any of these bullet
7 points; is that correct?

8 A. On, like, a February 6?

9 Q. Yes.

10 A. And if I met them on February 10?

11 Q. Yes.

12 A. Then correct, I would have not heard from anyone from
13 Veolia on that date about these items.

14 Q. And you mentioned when you testified yesterday that prior
15 to coming to testify in this trial, you had some meetings with
16 plaintiffs' counsel.

17 Do you remember that?

18 A. Yes.

19 Q. And you testified that during some of those -- during
20 those meetings, you went over some exhibits?

21 A. Yes.

22 Q. Did you go over this exhibit with them?

23 THE COURT: You're looking -- okay. Because you've
24 got the timeline --

25 BY MR. CHRISTIAN:

1 Q. Plaintiffs' Exhibit 467.

2 THE COURT: While he's thinking about that, it's
3 worth reminding -- I think I mentioned this before that
4 there's nothing improper about a witness meeting with lawyers
5 before they testify. I think we discussed that a couple of
6 weeks ago.

7 But it's also fair to ask him about it.

8 THE WITNESS: I believe we did -- I recall looking at
9 this exhibit. And I believe I had first seen it during my
10 deposition.

11 BY MR. CHRISTIAN:

12 Q. You remember seeing this in your deposition?

13 A. I think I did. There were a lot of exhibits.

14 Q. Okay. So I'm going to ask you about a specific question.

15 You remember Mr. Stern asking you this question:

16 "Did anybody ever come to you at or around February 6
17 from Veolia, 2015, and say, 'I know our scope says we got to
18 review this testing, but we believe that different testing is
19 needed to help?'"

20 Do you recall that question?

21 A. Yes.

22 Q. And do you find the contents of that question in this
23 bulleted list that's here?

24 In other words --

25 A. Which item again, sir?

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1 Q. If you look at one of the -- one of the -- well, look at
2 the bullets. Tell me which bullet that question would
3 correspond to.

4 A. And would you remind me of the item --

5 Q. Sure.

6 A. -- that you were asking about?

7 Q. Sure. Yes. Plaintiffs' Exhibit 467.

8 And basically it says, "I know our scope says we got
9 to review this testing."

10 THE COURT: Wait. What are you reading from? You're
11 reading from the exhibit?

12 MR. CHRISTIAN: I'm reading from the transcript.

13 THE COURT: Oh, from the transcript. No wonder.

14 MR. CHRISTIAN: Yes, yes, yes.

15 THE COURT: Okay. And what was the question in the
16 transcript?

17 MR. CHRISTIAN: "Did anybody ever come to you at or
18 around February 6 from Veolia, 2015, and say, 'I know our
19 scope says we got to review this testing. But we believe that
20 different testing is needed to help.'"

21 If you don't see it here, that's fine.

22 MR. STERN: I'm not even sure what the question is.

23 THE COURT: It's okay.

24 THE WITNESS: I see in the first bullet -- I mean,
25 we're all looking at the same document. It says something

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1 about, "testing needs to be done, reputable entity."

2 Second bullet, "testing locations."

3 So I understand that at around this time, Veolia was
4 in conversation with various city personnel. There were
5 exchanges taking place about the work in the contract. I
6 would have understood that like secondhand.

7 BY MR. CHRISTIAN:

8 Q. Okay.

9 A. And I do not recall being contacted by Veolia at this
10 time. I believe -- I recollect that I met Veolia individuals
11 on February 10. But I understood there were other
12 conversations with city personnel at that time. It was a
13 process of getting to a kickoff meeting.

14 Q. Okay.

15 A. So that was what I was asked to be a part of.

16 Q. Okay. Thank you. So we've talked about -- you've already
17 established that you looked at this email. But Mr. Stern did
18 not -- flip over -- if you take a look at the backside of that
19 email at the bottom and see what it was really about.

20 MR. STERN: Objection. That's --

21 THE COURT: Yeah, just ask him a question less so
22 about Mr. Stern. But just ask him --

23 MR. CHRISTIAN: You'll see what I'm getting at, Your
24 Honor.

25 BY MR. CHRISTIAN:

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1 Q. So this email here -- and it is from Gerald Ambrose.

2 Do you see that?

3 A. Yes, I do.

4 Q. It's at the beginning of the thread.

5 Do you see that?

6 A. Yes.

7 Q. And the date is Friday, February 6 of 2015.

8 Do you see that?

9 A. Yes, I do.

10 Q. And it's to Kelly Rossman-McKinney.

11 Do you see that?

12 A. Yes.

13 Q. And you're there, Dayne Walling?

14 A. Yes. I now remember this exchange --

15 Q. Elizabeth Murphy?

16 A. -- that I was a part of, yes.

17 Q. Howard Croft?

18 A. Yes.

19 Q. And Water Quality Advisory Committee, correct?

20 A. Yes.

21 Q. And so it begins, "Kelly," with the opening, correct?

22 A. Yes, it does.

23 Q. Then the next line is, "Attached is my idea of the
24 committee's charge."

25 A. Yes.

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1 Q. Do you see that?

2 A. Yes, I do.

3 Q. So on February 6 of 2015, this committee was still an
4 idea, correct?

5 A. Yes. This is really helpful. This is exactly what I was
6 asking for, a document to refresh my memory. And the idea of
7 the committee, if my memory is correct, was actually my idea.

8 Q. Okay.

9 A. That I came up with, because we had had so much success
10 with our collaborative steering committee on our master
11 planning process. And that group had continued to meet, had
12 operated under the Public Meetings Act, even though it's not
13 required to.

14 And I was pleased that the emergency manager was in
15 agreement. So we were working on this over a period of, I
16 believe, a couple of weeks.

17 So this is now becoming more formal. And as you've
18 stated, this is an email that I'm included on that Jerry is
19 running the idea by Kelly.

20 Q. Okay. In talking about this idea, the first sentence
21 says, "I have talked with Liz and Howard about having more
22 independent water testing done."

23 Is that correct?

24 A. Yes.

25 Q. And that more independent water testing was referring to

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1 that idea with respect to the committee, correct?

2 A. I mean, it's all related. But this community committee as
3 we called it, I mean, it would not have been monitoring testing
4 or -- so I think this paragraph is something that was -- this
5 is emergency manager's email.

6 That was on his mind about additional steps the city
7 could be taking.

8 Q. Could be taking with respect to the committee?

9 A. With the water problem.

10 Q. Oh, with the water problem?

11 A. Not with the committee. Remember, the committee is still
12 an idea.

13 Q. Right. Right. So at that point in time, this says,
14 "independent water testing"; is that correct?

15 A. Yes.

16 Q. Independent water testing would not be conducted by the
17 city; is that correct?

18 A. That's how I understood it, correct.

19 Q. And independent water testing, as in this context, would
20 not be conducted by the MDEQ, would it?

21 A. I can't say for certain on that. It definitely would -- I
22 mean, Mr. Ambrose is the city's emergency manager. So
23 independent would definitely be, you know, not through the city
24 lab.

25 Whether that involved MDEQ in some way or they might

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1 offer to pay for something. I mean, those were the kind of
2 discussions that would take place.

3 Q. Okay. So let's go to the next sentence, which says, "For
4 example, why don't we ask and pay for if necessary the City of
5 Ann Arbor who draws water from a river to test our water?"

6 So this was testing that was not being done; is that
7 correct?

8 A. Correct. Testing not being done. Right.

9 Q. Future testing. Potential --

10 A. An idea for future testing, yes.

11 Q. All right. So returning to Mr. Stern's questions.

12 A. Okay.

13 Q. If the testing did not exist, can you think of any reason
14 why VNA would call you to talk to you about that testing?

15 A. Can I think of any reason why they might? Is that your --

16 Q. Let me rephrase it. Thank you.

17 So at that time, the committee didn't exist, correct?

18 A. Right. There's one community advisory committee was in
19 the works, yes.

20 Q. VNA had never met you, correct?

21 A. Not that I recall.

22 Q. This testing did not exist, correct?

23 A. This testing that the --

24 Q. It was --

25 A. I'm not aware that the city -- that there was any

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1955

1 independent non-City of Flint testing being done at the time.

2 Q. And, in fact, this very email talked about potential
3 future testing; is that correct?

4 And -- is that correct?

5 A. Yes. That first bullet on the other page is, "Testing
6 needs to be done by quality water labs, a reputable entity like
7 the university." Yes, it does say that.

8 Q. So it wouldn't make any sense for VNA to contact you, whom
9 they hadn't met, about testing that didn't exist, correct?

10 THE COURT: Go ahead.

11 THE WITNESS: There's a first time for everything in
12 this job, right? I explained to this body the first day
13 Mr. Croft walked into my open office. I didn't know Mr. Croft
14 before Mr. Croft walked into my office. I don't feel like I'm
15 in a position to say why or why not Veolia might have -- or
16 someone from Veolia might have contacted me.

17 I mean, I'm on the city's website. Anybody who wants
18 to contact me can. I took Mr. Stern's questions to be, you
19 know, did that occur. So why someone from Veolia would have
20 felt so concerned about something that they would have brought
21 it to my attention or not, I guess that's what we're here to
22 find out.

23 BY MR. CHRISTIAN:

24 Q. So the contract for services did not include testing that
25 did not even exist, correct?

March 31, 2022

1956

1 A. The contract? What tab is the contract?

2 Q. Yes. Let's go back to the contract. It is Tab 15.

3 A. I just ask, because I remember there being a lot of
4 discussion about testing. But I don't recall who was doing
5 what testing.

6 These first pages are just the template contract.

7 Q. So you're taking a look at the Flint contract. As you
8 look at it, tell me if you see anything about City of Ann Arbor
9 testing the water.

10 A. Okay. I don't see anything about City of Ann Arbor
11 testing.

12 Q. Do you see anything about UM doing the testing in the
13 contract?

14 A. No. And I'm looking on what's page 9, if the jury is
15 following along. That's the specific scope of work. This is
16 just template.

17 THE COURT: See, what you have up there is just what
18 they use for every contract. That they'll have union people.

19 THE WITNESS: Yes. This is the page. Yeah, so I --
20 so there's nothing on here about U of M.

21 BY MR. CHRISTIAN:

22 Q. You see anything about hospitals testing in the contract?

23 A. No.

24 Q. And you don't need any more time to look at the contract,
25 any other pages to see if those terms are there?

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1957

1 A. No. I had scanned those. Those other items were just
2 template language. They weren't specific to VNA other than
3 compensation. This exhibit was what would be attached.

4 Like with many city contracts, here's the template
5 that we all follow in terms of insurance and workers
6 compensation. Here's the scope of work. So this is the
7 one-page scope of work.

8 Q. Thank you. So while we're talking about the contract,
9 let's talk about some other aspects of it.

10 You recall testifying that's a one-week assessment in
11 terms of the contract?

12 A. Yes, I do.

13 Q. And it was going to provide two water and two
14 communications experts for 40 hours at \$225 per hour?

15 A. Yes.

16 Q. And the total amount of the contract would be \$40,000?

17 A. Yes.

18 Q. And that \$40,000 was below the \$50,000 threshold that the
19 emergency manager had for being able to approve the contract on
20 his own; is that correct?

21 A. Yes.

22 Q. And if the emergency manager wanted to approve a larger
23 contract, something more than \$50,000, he'd have to get
24 approval from the Department of Treasury; is that correct?

25 A. Yes.

March 31, 2022

1958

1 Q. Just to be clear, the contract is VNA, correct?

2 A. Yes.

3 Q. Okay. So I want to turn to a section of the contract
4 entitled, "Compensation." And hopefully we'll be able to pull
5 that up, as well, on the monitor. We're going to zoom in on
6 it, so everyone can see that section.

7 It is -- let's see here.

8 THE COURT: What are you looking for, Mr. Christian?

9 MR. CHRISTIAN: I'm looking for the "Compensation"
10 section of the contract.

11 THE COURT: For Veolia?

12 MR. CHRISTIAN: Yes, Your Honor. Okay. So we have
13 it here.

14 THE WITNESS: Page 2.

15 BY MR. CHRISTIAN:

16 Q. So there's a section. In this section, it says,
17 "Contractor services will be utilized as needed and as
18 determined solely by the City of Flint"; is that correct?

19 A. Yes. The City of Flint's the payee.

20 Q. The payee.

21 A. Yes.

22 Q. So they would pay the money to the contractor?

23 A. Right.

24 Q. The city is the payee or the payor?

25 A. Oh, the payor. Right, yes.

March 31, 2022

1959

1 Q. So they pay the money to the payee, which is Veolia?

2 A. That's right.

3 Q. And you understand this to mean that VNA would do what the
4 city told it to do, correct?

5 A. VNA would perform the scope of work agreed to with the
6 city. That's the page we were just looking at. I mean, a
7 consultant -- you asked me, you know, about my experience with
8 this.

9 You have a scope of work that you perform, and you
10 bring your expertise. It's not a matter of -- you said "being
11 told by." This isn't a -- if you're actually being directed to
12 do things that are specific terms of responsibilities and times
13 of day, you actually become an employee.

14 Q. Are you giving me a legal definition of what an employee
15 is?

16 THE COURT: No. He's answering your question.

17 THE WITNESS: I was just drawing a distinction. When
18 you said "told." The scope of work was agreed upon by both
19 parties.

20 BY MR. CHRISTIAN:

21 Q. Sure. And there was a scope of work in this contract,
22 correct?

23 A. Yes.

24 Q. And in addition to that, there is this clause or this
25 sentence that says, "Contractor services will be utilized as

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1960

1 needed and determined solely by the City of Flint," correct?

2 A. Yes.

3 Q. And when the City of Flint determines what the services
4 will be, it will communicate those -- it must communicate
5 those, that determination to VNA; is that correct?

6 A. This may be beyond my understanding. The purchasing
7 director maybe could answer that question.

8 I mean, my understanding is when a contractor would,
9 let's say, submit that invoice to the city, the city would be
10 determining, let's say, if all of that was eligible under the
11 scope or not.

12 I don't know about the part you're saying of it being
13 directed up front. I think it's more of a collaborative
14 process around the scope. But the city in this kind of
15 template language is protecting its right to go through those
16 voices and determine solely whether those were needed or
17 utilized.

18 But that's my understanding.

19 Q. So in that sentence that I've read twice now, do you see
20 the word "invoices"?

21 A. No. But I believe there's an invoice process related to
22 how you get the compensation.

23 Q. And as far as you understand, the city paid the
24 compensation, correct?

25 A. Yeah. I do believe that. I do understand that. And

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1961

1 there would be records to that effect. I don't have a
2 recollection of when those were disbursed.

3 I remember almost immediately there were discussions
4 about, "This isn't going to be a one-week process." But maybe
5 there would be some documents to refresh my memory of that.

6 I'm thinking there wasn't an invoice from Veolia at
7 the end of seven days. So that would be February 17. But I'm
8 just -- I'm not sure of that. That's my recollection.

9 Q. Sure. So I apologize. I thought I asked you the question
10 if the word "invoice" is anywhere in that sentence?

11 A. No.

12 Q. Thank you. So yesterday, you testified with Mr. Stern
13 about -- we just talked about a moment ago about a February 6
14 -- question about February 6. So let's move to another date
15 before the contract was signed on February 10.

16 So I'm going to talk about -- it would be -- and you
17 may want to grab this. Mr. Stern's -- let me -- yeah. So
18 Mr. Stern's notebooks that you have.

19 A. Yes, I can do that.

20 Q. Walling 1 and 2. Just Walling 1.

21 A. Okay.

22 Q. So if you turn to Tab 45. Do you remember looking at --

23 MR. CHRISTIAN: Tab 45 is Plaintiffs' Exhibit 464, so
24 we can put it up on the monitor.

25 BY MR. CHRISTIAN:

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1962

1 Q. Do you recall that?

2 A. Yes.

3 Q. And just to give kind of an overview. So would you take a
4 quick look at Tab 46. That is, I believe, Plaintiffs' Exhibit
5 634.

6 MR. STERN: So are we looking at two tabs now?

7 THE WITNESS: 45, sir.

8 THE COURT: He'll tell us why we're doing this.

9 MR. CHRISTIAN: Yes, I will.

10 BY MR. CHRISTIAN:

11 Q. Because in rapid succession, you remember testifying about
12 three different -- an email thread, three different versions of
13 it yesterday where Mr. Stern asked you about did anyone tell
14 you lead could be a problem?

15 A. Yes.

16 Q. Okay. So let's look at Tab 45, Exhibit 464.

17 And do you recall this email?

18 A. I recall we looked at it.

19 Q. Yes.

20 A. I'm not on this email at the time.

21 Q. Okay. Sure. You're not on the email. So the date on
22 this email at the bottom of the thread is -- what's the date?
23 I'm looking for it here. February 8 or February 9.

24 A. It's the 9th.

25 Q. February 9, 2015.

March 31, 2022

1963

1 When you testified yesterday, you spent -- you know,
2 you talked a little bit about how important it would have been
3 for you to know if there was lead found anywhere in Flint; is
4 that correct?

5 A. Yes.

6 Q. And if you knew that lead had been found somewhere in
7 Flint, that would cause you great concern; is that correct?

8 MR. STERN: Your Honor, that misstates his testimony
9 from yesterday. That's not what he said.

10 THE COURT: Well, we'll just see what -- overruled.

11 THE WITNESS: I remember us talking about Ms. LeeAnne
12 Walters --

13 BY MR. CHRISTIAN:

14 Q. Ms. LeeAnne Walters.

15 A. -- around this time. And understanding there was a high
16 level of lead at her house. And I'm not on this email chain,
17 but I was aware of this same.

18 So there was an MLive story that was done after the U
19 of M Flint notice went out. So I'm not on this email chain --

20 Q. Right.

21 A. -- but I became aware around that same time that U of M
22 Flint had tested a high level of lead and some number of
23 drinking fountains, I believe it was.

24 Q. On the campus?

25 A. On the campus, yes. And so I was aware of those two

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1964

1 things.

2 Q. And you became aware through the newspaper?

3 A. I do believe that's where I first saw it. It's possible
4 that Jason might have also mentioned it to me around that same
5 time. But it all happened -- the digital media, it all happens
6 very quickly. The article was probably up on, you know, the
7 9th or the 10th.

8 Q. So let's turn to the top of the second page starts with,
9 "Hi, Jason." And I'm just going to read this to you to help
10 put us in the context.

11 "Hi, Jason. I'm working on a story about an email
12 that was sent out to UM Flint campus community on Friday about
13 their water quality. I was hoping to get comment on if any of
14 it seems related to the issues with Flint water or if it's an
15 isolated incident:

16 "They saw high levels of lead in certain locations.
17 I will copy the email below this."

18 You see that?

19 A. Yes.

20 Q. And so did Jason tell you about this?

21 A. I don't have a specific memory of him doing that, but I
22 was knowledgeable of this communication around that time.

23 Q. So -- and if you go to the top, there's an email -- of the
24 email on the first page. There is -- it's from Mr. Robert
25 Nicholas.

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1965

1 Do you see that?

2 A. Yes.

3 Q. It's on February 9 at 3:16 P.M., correct?

4 A. Yes.

5 Q. And let's just -- Mr. Stern asked you -- he read this, I
6 believe. Said, "No. Lead could be a problem based on the
7 water," correct?

8 A. It does say that, yes.

9 Q. And you remember him asking you, "Did anybody at VNA tell
10 you that lead could be a problem?"

11 Do you remember that?

12 A. Yes.

13 Q. And Mr. Stern then showed you what's in Tab 46 as
14 Plaintiffs' Exhibit 634.

15 Do you recall that?

16 And I'll give you time to turn to it, of course.

17 A. Yes, I do. I recall this, as well.

18 Q. And we'll pull this up on the monitor, as well. 634, yes.

19 And if you look on the second page, there's a section
20 that starts with, "Hi, Jason."

21 Do you see that?

22 A. Yes.

23 Q. And I just read it for you, so I won't read it again. But
24 would you -- is it fair to say that that's the same paragraph
25 starting with, "Hi, Jason," that was in the previous email?

March 31, 2022

1966

1 A. Yes.

2 Q. So it at least includes some portions of the same thread;
3 is that correct?

4 A. Yes.

5 Q. And if you look at the top of the email, it's from
6 Mr. Robert Nicholas. And I believe Mr. Stern highlighted that
7 it says, "Kelly, do not pass this on," correct?

8 A. Yes. I remember we looked at this.

9 Q. And you received -- you were asked another question about
10 did VNA, anybody at VNA tell you anything about and something
11 related to lead.

12 Do you remember that?

13 A. Yes.

14 Q. So let's turn to now Tab 47, Plaintiffs' Exhibit 466. And
15 let's go to the top of the second page.

16 And you see that, "Hi, Jason," and the paragraph --

17 A. Yes, yes.

18 Q. That's February 9, 2015. And if you go to the first page
19 at the top, there is an email from Robert Nicholas on
20 February 9, 2015, at 3:35.

21 Again, there's a quote -- there is content about
22 lead?

23 A. Yes.

24 Q. And Mr. Stern read that to you, correct?

25 A. He may have, yes.

March 31, 2022

1967

1 Q. And then he asked you a question, "Did anybody at VNA ever
2 tell you that lead seems to be a problem," correct?

3 A. Something to that effect. And my -- I do not recollect
4 anyone from Veolia contacting me or discussing with me the
5 threat of lead in Flint's drinking water.

6 Q. And Flint's drinking water or about the University of
7 Michigan Flint; is that correct?

8 A. Well, right. By drinking water, I mean the whole thing.
9 Whoever's using it, you know, when it comes out of tap, I'm
10 thinking of that as Flint's drinking water.

11 Q. And that would include University of Michigan Flint?

12 A. Yes.

13 Q. So because VNA didn't tell you about this, the issue of
14 lead, you didn't hear anything from them, didn't see any
15 communications from them dealing with lead before February 10
16 of 2015?

17 A. Correct.

18 Q. And I believe you testified that you didn't see anything
19 in the report mentioning specifically lead; is that correct?

20 A. Yes. We did look at the report. Because I think you may
21 have said or someone else, I do get lots of emails. I get lots
22 of meetings. But I paid quite a good deal of attention to that
23 report itself.

24 MR. CHRISTIAN: Your Honor, may I approach? I have
25 an exhibit to distribute.

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1968

1 THE COURT: Oh, okay. Sure. You know, it's 10:20.
2 So why don't we take a break. And you can leave the exhibit
3 up there, and so he'll have it when we get back from the
4 break.

5 So for members of the jury, thank you, very much, for
6 your attention. And we'll be back in about 15 minutes.

7 THE CLERK: All rise for the jury.

8 (Jury Out)

9 THE COURT: Please be seated. I have just one
10 follow-up question right now on the issue of the VNA Flint
11 facts tweeting.

12 And, Mr. Stein, I think you were responding on that.

13 Did you inquire as to whether anyone on your team,
14 meaning all of the lawyers and paralegals and all of the
15 people involved, but lawyers are the ones bound particularly
16 by the --

17 MR. CHRISTIAN: Your Honor, may I interject for a
18 moment? The witness is still in the courtroom.

19 THE COURT: Yeah, you may step down. I'm sorry.
20 Thank you.

21 THE WITNESS: I thought I was waiting on an exhibit.
22 I'm sorry.

23 THE COURT: This went on to something totally
24 different. But thank you. Thank you.

25 Did you inquire, Mr. Stein, as to whether any of

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1969

1 those lawyers and support staff are providing transcripts or
2 exhibits from the trial to the bloggers?

3 MR. STEIN: So I did not specifically ask that. I
4 believe we are providing transcripts to our client. I don't
5 know -- you know, Veolia is a big company. I'm not sure
6 exactly how it gets distributed from there. But we are
7 certainly providing transcripts to the client.

8 THE COURT: Okay. Okay. All right. Well, I would
9 just want to make sure that you all -- all of the counsel of
10 record -- and Mr. Mason, is the same true for LAN?

11 Did you inquire as to whether any lawyers on your
12 team are participating in the VNA Flint facts blog --

13 MR. MASON: Absolutely --

14 THE COURT: -- or Tweet?

15 MR. MASON: -- we are not.

16 THE COURT: Okay. And they're not providing exhibits
17 and transcripts?

18 MR. MASON: We don't have anything to do with this,
19 Your Honor.

20 THE COURT: Okay. All right. Thank you.

21 MR. STEIN: Your Honor, sorry. Very briefly. As a
22 personal matter, I need to leave court today around our noon
23 break.

24 THE COURT: Oh, absolutely.

25 MR. STEIN: I just wanted to let you know.

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1970

1 THE COURT: Okay. Thank you. Everyone is always
2 free to come and go as you see fit. I mean, I think the jury
3 is really focused on the witness and the examiner, and they
4 may not even notice, I'm sorry to say. I would notice, but.

5 MR. STEIN: Completely agree.

6 MR. MAIMON: We'll notice, too.

7 THE COURT: Okay. Take care of whatever you need to
8 take care of.

9 (Brief Recess)

10 THE COURT: Please be seated. And we will get the
11 jury. And while we're getting the jury, I want to just look
12 at the calendar. I issued a very short opinion yesterday
13 regarding the oral motion for remote testimony of Mr. Miguel
14 Del Toral.

15 And what I'm interested in knowing is whether we can
16 do a practice run at 2:00 P.M. -- or at the -- when the
17 testimony ends on Wednesday, April 6.

18 MR. MAIMON: Oh, I thought Your Honor was going to
19 suggest it for Monday, as soon as we're done. We'll be ready
20 to do it on Monday. And he'll be ready also. We asked him to
21 be available on Monday for the voir dire. And if Your Honor
22 tells us when --

23 THE COURT: You know, I think we can actually do
24 that. I have a -- good -- something at 2:30. Or if that
25 needs to be moved or delayed.

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1971

1 MR. MAIMON: I can't imagine this is going to take
2 long.

3 THE COURT: Yeah. It's just that it will need to be
4 -- the voir dire portion of it will need to be on the record.
5 And -- all right. Then that's what we'll do.

6 We'll do Monday April 4 at the close of the
7 testimony.

8 MS. BUSH: May I ask a question, Your Honor?

9 THE COURT: Sure.

10 MS. BUSH: I'm sorry. But as the Court -- and I'm
11 sorry I'm asking you this.

12 THE COURT: Okay.

13 MS. BUSH: But I'm taking my mom to a doctor
14 appointment this afternoon.

15 THE COURT: Oh, sure.

16 MS. BUSH: But if the Court is going to go past
17 1:30 --

18 THE COURT: I can never go past 1:30, because with
19 the jury -- because one of our jurors has a strict need to be
20 at her place of employment.

21 MS. BUSH: Understood. I'm just wondering about
22 argument, about stuff.

23 THE COURT: I can't predict what anyone will bring.

24 MS. BUSH: Okay.

25 THE COURT: Please rise for the jury.

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1972

1 (Jury In)

2 THE COURT: Welcome back. And you might have noticed
3 that Bill isn't here today. We can barely -- please be
4 seated. We can barley function without Bill. But I had to
5 let him take a brief trip with his family.

6 And Leslie, too. So we persevere without them.

7 So, Mr. Christian, go ahead.

8 MR. CHRISTIAN: Okay. Your Honor, I'm going to
9 distribute the exhibit. May I approach, Your Honor?

10 THE COURT: Yes. Thank you. I probably didn't tell
11 you, Mr. Christian, I don't have good eyes. So I'll have my
12 glasses off oddly.

13 MR. CHRISTIAN: I apologize, Your Honor.

14 THE COURT: That's okay.

15 MR. CHRISTIAN: We will try to get this up on the --

16 THE COURT: Well, you had no way of knowing that. My
17 eyes are so bad that with my glasses off I can tell there are
18 people there, but I can't tell features. I can't tell
19 anything.

20 BY MR. CHRISTIAN:

21 Q. Okay. So what we have distributed is what has been
22 premarked for identification as VNA trial Exhibit 1064.

23 And Mr. Walling --

24 A. Yes.

25 Q. -- would you please take a look at the exhibit or the

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1973

1 document?

2 A. Yes.

3 Q. And about 4 inches down, just above the halfway point on
4 the page, actually at the top of the page, look at who the --
5 to-line is to Jason Lorenz; is that correct?

6 A. At the very top of the document?

7 Q. Very top of the document, yes.

8 A. Yes.

9 Q. And in the CC line, on the second line, that is your name,
10 Dayne Walling, correct?

11 A. Yes.

12 Q. So this email was sent to you?

13 A. Yes, it was.

14 MR. CHRISTIAN: Your Honor, I move to admit VNA trial
15 -- VNA Exhibit 1064 into evidence.

16 MR. STERN: No objection.

17 MR. ERICKSON: No objection.

18 THE COURT: Okay. It's received.

19 (VNA Exhibit No. 1064 Admitted Into Evidence.)

20 BY MR. CHRISTIAN:

21 Q. So we would like -- we're going to publish this letter on
22 the monitor.

23 THE COURT: Sure.

24 BY MR. CHRISTIAN:

25 Q. And we're going to turn to the second page at the bottom.

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1974

1 And, Mr. Walling, you recall we were talking not long
2 ago before the break about going through you testifying about a
3 number of emails?

4 A. Yes. That we looked at.

5 Q. Yeah. That we looked at.

6 A. Yes.

7 Q. And you remember going over some -- look at the language
8 at the bottom. It says, "Hi, Jason. I'm working on a story
9 about an email that was sent out to the UM Flint community."

10 You remember that language from all three of those
11 other emails?

12 A. Yes.

13 Q. And then the next email up is from Jason Lorenz.

14 MR. CHRISTIAN: And let's highlight.

15 BY MR. CHRISTIAN:

16 Q. It says, "Hello, everyone."

17 MR. CHRISTIAN: And then let's highlight the
18 paragraph below that.

19 BY MR. CHRISTIAN:

20 Q. And I'm going to read it, and I'll ask you afterwards if I
21 read it correctly.

22 "Here is another water-related story that I believe
23 can be deflected. It appears UM Flint has done water testing
24 on their campus recently."

25 Did I read that correctly?

March 31, 2022

1975

1 A. Yes.

2 Q. "The tests came back showing TTHM levels were lower than
3 MCL, but have shown in a few places higher than acceptable lead
4 levels."

5 Did I read that correctly?

6 A. Yes.

7 Q. "Is this an internal plumbing issue that is not connected
8 to us?"

9 Did I read that correctly?

10 A. Yes.

11 Q. "Please advise."

12 Did I read that correctly?

13 A. Yes.

14 Q. Okay. And so just above that, there is an email from
15 Robert Nicholas at Veolia.

16 Do you see that?

17 A. Yes.

18 Q. And that's sent on February 9, 2015, at 3:16 P.M.,
19 correct?

20 A. Yes.

21 Q. And it's to Kelly Rossman-McKinney; is that correct?

22 A. Yes.

23 Q. And in the CC line is David Gadis, Scott Edwards, Matt
24 Demo, and Paul Whitmore; is that correct?

25 A. Yes.

March 31, 2022

1976

1 Q. And I'm going to read it. It says, "No. Lead could be a
2 problem based on the water."

3 Is that correct?

4 A. Yes.

5 Q. "Part of what we will do is look at the water quality,
6 testing, and results for lots of different variables."

7 Did I read that correctly?

8 A. Yes.

9 Q. So -- and just above that, and I'll just read the line
10 that says on --

11 MR. CHRISTIAN: Well let's go to the top of that
12 page. And -- okay. I'm sorry. The top of the previous page.

13 BY MR. CHRISTIAN:

14 Q. And just at the bottom, there's an email address
15 jlorenz@cityofflint.com. And below that, there is a message on
16 February 9, 2015, at 3:16 PM.

17 Do you see that?

18 A. Yes.

19 Q. From Kelly Rossman-McKinney.

20 A. Yes.

21 Q. Says, "FYI, from one of the Veolia team members who will
22 be there tomorrow."

23 Do you see that?

24 A. Yes, I do.

25 Q. So if we turn to the front page, the next email we see is

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1977

1 from Mr. Jason Lorenz, correct?

2 A. Yes.

3 Q. And that's on February 9, 2015, at 3:24 P.M., correct?

4 A. Yes.

5 Q. And it says, "Thanks for the heads up, Kelly. And I
6 thought that was the easy question of the day"; is that
7 correct?

8 Did I read that correctly?

9 A. Yes.

10 Q. And then the email before that is on February 9, 2015, at
11 3:37 P.M., correct?

12 A. Yes.

13 Q. Kelly Rossman-McKinney?

14 A. Yes.

15 Q. Ask it says, "Exactly. There is no easy question when it
16 comes to water."

17 Did I read that correctly?

18 A. Yes.

19 Q. And then immediately above that is a message from Jason
20 Lorenz, correct?

21 A. Yes.

22 Q. Sent Monday, February 9, 2015, at 4:28 P.M., correct?

23 A. Yes.

24 Q. And it's to Kelly Rossman-McKinney, correct?

25 A. Yes.

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1978

1 Q. And it's copied to Gerald Ambrose, the emergency manager?

2 A. Yes.

3 Q. Elizabeth Murphy, his assistant?

4 A. Yes.

5 Q. Howard Croft, correct?

6 A. Yes.

7 Q. Dayne Walling, correct?

8 A. Yes.

9 Q. Daugherty Johnson, correct?

10 A. Yes.

11 Q. And others. At least one more. And this message says,
12 "Our testing has shown no elevated levels of lead in the
13 system. Would that be fair to say in the response if we can't
14 say outright that it's a plumbing issue?"

15 Did I read that correctly?

16 A. Yes.

17 Q. So just above that is a message on February 9, 2015, at
18 4:30 P.M., from Kelly Rossman-McKinney; is that correct?

19 A. Yes.

20 Q. And it reads is this -- I'll read it, and you tell me --
21 I'll ask you if it's correct.

22 "If it's true that your own tests have shown no
23 elevated lead levels, it should be A-OK to say. But is that
24 true in all site testing?"

25 Did I read that correctly?

March 31, 2022

1979

1 A. Yes.

2 Q. And then in the message above that on February -- it's
3 dated February 9, 2015, at 4:31 P.M., correct?

4 A. Yes.

5 Q. And it's from Jason Lorenz, correct?

6 A. Yes.

7 Q. And he wrote, "According to Duffy and Howard, it is,"
8 correct?

9 A. Yes.

10 Q. "Can anyone let me know if I missed something?"

11 Is that correct?

12 A. Yes.

13 Q. And then at the top, the very top, there's a message, and
14 we can see "to line."

15 "Jason Lorenz City of Flint," correct?

16 A. Yes.

17 Q. And there are a number of names in the CC line, correct?

18 A. Yes.

19 Q. And one of those names is Dayne Walling; is that correct?

20 A. Yes.

21 Q. So Mr. Stern asked you about three different emails,
22 correct?

23 A. Yes. The other emails we looked at in the exhibits.

24 Q. Right. And one of the questions was about whether anyone
25 at Veolia ever told you that lead could be a problem, correct?

March 31, 2022

1980

1 A. Yes. I remember that question.

2 Q. And in truth and fact, you receive an email which had that
3 right in the email; is that correct?

4 A. Yes. I see in this email string that Kelly
5 Rossman-McKinney included the communication from Robert
6 Nicholas.

7 Q. And in addition to that, you received additional
8 commentary from people in the Department of Public Works about
9 that lead finding, correct?

10 A. Yes. That's what this email reflects. So this is helpful
11 for refreshing my memory of that email exchange.

12 Q. And it basically says that there's not a lead problem; is
13 that correct?

14 A. Well, I think Duffy -- if we're referring to Duffy's
15 response, which is on the screen, I mean, it speaks for itself,
16 right?

17 Q. Did anybody -- well, did Howard Croft go to the newspapers
18 after this email and say, "We have a lead problem at the
19 University of Michigan Flint"?

20 A. Not that I recall. We could look at that coverage. I
21 don't recall him doing that.

22 Q. Did you tell Howard Croft to go to any media outlets and
23 tell them that there was a lead problem at the University of
24 Michigan Flint?

25 A. No. The communication had already been distributed to the

March 31, 2022

1981

1 U of M Flint campus community. That's the notice that was in
2 all of these email strings.

3 Q. I'm sorry. I must not be clear again. I asked you a
4 question.

5 Did you tell Howard Croft --

6 A. No, I did not.

7 Q. Did you tell Daugherty Johnson to alert the media that
8 there was a lead problem at the University of Michigan Flint?

9 A. No.

10 Q. Did you tell anyone to alert the media that there was a
11 lead problem at the University of Michigan Flint?

12 A. No.

13 Q. You had this email, correct?

14 A. Yes.

15 Q. And no one was stopping you from telling the media,
16 correct?

17 A. Correct. No one was stopping me.

18 Q. Did you tell Veolia that there was not a problem with lead
19 at the University of Michigan Flint?

20 A. Not -- not that I recall.

21 Q. Did you show them the emails from within the Department of
22 Public Works showing the results of their testing and their
23 conclusions?

24 MR. STERN: Objection. Veolia's on -- Veolia's
25 notifying him about the university.

March 31, 2022

1982

1 THE COURT: That's sustained.

2 MR. CHRISTIAN: Objection, Your Honor.

3 BY MR. CHRISTIAN:

4 Q. Did you receive this -- this email at the top, it says,
5 "To Jason Lorenz."

6 Do you see anywhere that it came from Veolia?

7 A. No. This full string was part of the correspondence from
8 Jason Lorenz.

9 Q. Do you recall receiving any emails directly from Veolia?

10 A. I don't recall receiving emails directly from Veolia.

11 Q. But you received the email content from Veolia about lead
12 could be a problem, correct?

13 A. That's what I'm seeing now. I don't -- I don't recall
14 recently having seen this email. But I do see it now. And I
15 was very diligent about reading my emails.

16 MR. STERN: Are you done with that document?

17 MR. CHRISTIAN: Yes, I am.

18 MR. STERN: Your Honor, for the doctrine of
19 completion, can we have Mr. Walling read the final note from
20 the first email that went out?

21 THE COURT: Certainly.

22 MR. STERN: If we could go back and just read the top
23 there.

24 THE WITNESS: Your Honor, am I to read --

25 THE COURT: So just that it's to Jason Lorenz from

March 31, 2022

1983

1 Daugherty Johnson. You're copied on it.

2 And what does it say?

3 THE WITNESS: The subject is "Re-forward Forward Help
4 With the Flint Journal Article. The lead issue is directly
5 related to the plumbing in the UM system. Our testing shows
6 no elevated lead issues in our treated or source water. The
7 sporadic occurrence on site at UM further demonstrates that.
8 Duffy."

9 THE COURT: Okay. Thank you.

10 MR. STERN: Thank you, Judge.

11 BY MR. CHRISTIAN:

12 Q. So there was no lead problem according to Duffy Johnson?

13 A. He's stating, "Our testing shows no elevated lead issues
14 in our treated or source water."

15 Q. And so that was stated on February 9 of 2015?

16 A. Yes, it was.

17 Q. And so when you were asked about whether Veolia told you
18 on February 9 that there was lead or lead could be a problem,
19 the answer had already reached you, correct?

20 A. I see that now, that there was the -- that I was on this
21 email string that included Rob Nicholas's remarks February 9 at
22 3:16.

23 Q. And when you were preparing for trial and you were shown
24 exhibits, did anyone tell you that you had received an email
25 where Veolia had said that lead could be a problem at UM Flint?

March 31, 2022

1984

1 A. I don't believe so. I don't -- I don't recall seeing this
2 in my deposition either. But these documents are always
3 helpful for that purpose. That was one of the things that
4 always helps with my testimony.

5 Q. One moment, Mr. Walling. I just want to -- so I'd like to
6 direct your attention to Tab 17.

7 A. Sir, are we back in the Veolia binder?

8 Q. Yes, yes. Thank you for asking. It is Tab 17.

9 Have you had a chance to turn to it?

10 A. Yes.

11 Q. It's VNA Exhibit 544 [as spoken].

12 And do you recognize this exhibit?

13 A. Yes. These are my notes from a Veolia update meeting,
14 February 13, 2015.

15 MR. CHRISTIAN: Your Honor, we'd move to admit VNA
16 Exhibit 5444 into evidence.

17 MR. STERN: No objection.

18 MR. ERICKSON: No objection.

19 THE COURT: Okay. It's received.

20 (VNA Exhibit No. 5444 Admitted Into Evidence.)

21 BY MR. CHRISTIAN:

22 Q. So what's the date of these notes, Mr. Walling?

23 A. February 13, 2015.

24 Q. And the title is -- it says, "Veolia update."

25 And is it fair to say that there was a Veolia update

March 31, 2022

1985

1 meeting that day?

2 A. Yes. I recall a meeting in the -- that mayor's office
3 conference room. So not a public meeting, an internal meeting.

4 Q. And it may seem kind of basic. But the fact that you are
5 taking notes here, it means that you attended that meeting; is
6 that correct?

7 A. Yes, I did. I think I took -- took a lot of notes.

8 Q. And the first line says, "Veolia Rob perspective."

9 Was that Robert Nicholas, to your recollection?

10 A. Yes. Robert Nicholas.

11 Q. And as we go down to the next line, it says, "Preliminary
12 review."

13 So just for context, the contract was signed on
14 February 10 of 2015, correct?

15 A. Yes.

16 Q. And this is three days into it?

17 A. Yes.

18 Q. And it's a preliminary review?

19 A. Yes.

20 Q. And let's -- we're going to go down further in the email
21 here. Let's go down to there is a point here where -- do you
22 see the words "corrosive water"? Turn to the second page at
23 the top. Sorry.

24 A. Yes.

25 Q. It says, "You made corrosive water."

March 31, 2022

1986

1 A. Yes.

2 Q. And you put quotation marks around it?

3 A. Yes.

4 Q. And if I recall correctly, I think I'm understanding a
5 little about your approach to making notes is when you put
6 quotes around something, it means that it's important?

7 A. Yes. It's important. And someone said those exact words.
8 You know, I mean, to the best of someone taking notes, yes.

9 Q. Right. So at this point in time, this was February 14,
10 you were still having regular interactions with the staff at
11 the Flint Water Treatment Plant, correct?

12 A. No, I was not. The city administrator was in place around
13 this time.

14 Q. So you testified earlier that you're a quick study, right?

15 A. Yes. I'd like to think so.

16 Q. You do your homework, right?

17 A. I try.

18 Q. So this was something that was important enough for you to
19 put quotation marks around, right?

20 A. Yes.

21 Q. So you must have followed up on it, correct?

22 A. The corrosive water?

23 Q. Yes.

24 A. Yes. This was something that I tried to track, you know,
25 throughout our conversations.

March 31, 2022

1987

1 Q. You made efforts to find out what "corrosive water"
2 actually meant, didn't you?

3 A. I don't remember doing anything -- I don't remember doing
4 anything in this case independent. I was -- it was coming up
5 in quite a lot of discussions.

6 Q. "Corrosive water" was coming up in a lot of discussions?

7 A. Yes, yeah.

8 Q. And so you're telling me that you did not, despite the
9 fact that "corrosive water" was coming up in a lot of
10 discussions, do any further investigation into what that meant?

11 A. I don't recall that I did. There were already
12 conversations about, you know, different treatments, different
13 chemicals in those conversations about corrosive water.

14 Q. So Mr. Ambrose was in the room at that meeting, correct?

15 A. Yes.

16 Q. And Howard Croft was in that room, correct?

17 A. Yes. I have a memory of those two, Rob Nicholas, myself.
18 You know, there -- there may have been a couple of others, but
19 I remember those individuals.

20 Q. And you had the opportunity to speak with Mr. Croft if you
21 wanted to after the meeting; is that correct?

22 A. Yes.

23 Q. But you didn't ask him about corrosive water; is that
24 correct?

25 A. Correct. I don't remember -- I don't remember anything

1 specific at that time.

2 Q. Now, you personally don't hold a chemistry degree,
3 correct?

4 A. Correct.

5 Q. You don't hold a chemical engineer, correct?

6 A. Correct.

7 Q. You're not a water engineer, correct?

8 A. Correct.

9 Q. And you're not a sworn law enforcement officer, either,
10 for that matter, is that correct?

11 A. Correct.

12 Q. And part of the job of a mayor is to be able to get up to
13 speed quickly on areas that may not be in your area of
14 expertise; is that correct?

15 A. Yes.

16 Q. And so where you lack expertise, you have to turn to
17 others, don't you?

18 A. Yes.

19 Q. So when Mr. Rob Nicholas during that meeting said, "You
20 made corrosive water," you didn't ask him for further
21 information?

22 A. I don't remember that I did. It seemed to be being
23 discussed. That in, like, the preliminary review, changes in
24 chemicals. Doesn't look like that thought was complete about
25 filters. But we end up spending a lot of time on carbon

March 31, 2022

1989

1 filters.

2 So I was putting those -- I was putting those
3 comments together.

4 Q. So after this meeting, you didn't decide to go down to the
5 Flint Water Treatment Plant and ask someone there what
6 corrosive water is, did you?

7 A. I did not.

8 Q. And how many times did you say you went to the Flint Water
9 Treatment Plant during the course of your time as mayor?

10 A. It was about a handful of times.

11 Q. About a handful of times.

12 And that included the day when you pressed the
13 button, correct?

14 A. Yes.

15 Q. So a handful minus one, other than that initial kickoff,
16 correct?

17 A. Yeah. That's an estimate. My calendar would reflect the
18 details. But so a few times, handful of times.

19 Q. Sure. So and how many days have you been here in court?

20 A. This is my fourth.

21 Q. So you went during the course of your six years in office?

22 A. Yes. Six years and a few months because of that special
23 election.

24 Q. So six years and a few months, you went to the Flint Water
25 Treatment Plant only a handful of times, correct?

March 31, 2022

1990

1 A. Correct.

2 Q. And that was during a time when your citizens were coming
3 to you and saying, "Water smells like a wet dog," correct?

4 A. Yes.

5 Q. They were coming to you and saying, "My cat takes a sniff
6 of it and won't drink the water"; is that correct?

7 A. Yes.

8 Q. So just to be clear, there were people at the Flint Water
9 Treatment Plant who had some level of water expertise that you
10 did not have, correct?

11 A. Yes.

12 Q. And you did not go to any of them and ask them about
13 corrosive water, did you?

14 A. At around this time, no. I took these notes at this
15 meeting.

16 Q. And at the time, outside of the City of Flint, you had
17 contacts in the city of Washington, D.C., government, correct?

18 A. Yes.

19 Q. And you could have reached out to the City of D.C.'s
20 government and asked about corrosive water or connected with
21 someone who knows about it, correct?

22 A. Yes, I could have. We saw the correspondence, like
23 reaching out to the White House, not the D.C. government. But,
24 yes, I could have.

25 Q. But you didn't?

March 31, 2022

1991

1 A. I -- I did not.

2 Q. You did not.

3 A. I did not.

4 Q. Okay. So I'm going to queue up the timeline a moment
5 here. And give some time for it to be pulled up. I know
6 there's a lag.

7 And so we're going to add here that VNA tells
8 Mayor Walling, Emergency Manager Ambrose, and Howard Croft,
9 "You made corrosive water."

10 And that's February 13 of 2015.

11 MR. STERN: Your Honor, I have an objection. First
12 and foremost, I don't think there was a question about who
13 told you that the water was corrosive. But we can assume it
14 was Rob Nicholas, based on the question that Mr. Christian
15 asked.

16 THE COURT: Yeah.

17 MR. STERN: Number two, this arrow about VNA not yet
18 being in Flint, that's simply not accurate. It doesn't
19 comport with the testimony in the case or the emails that been
20 exchanged.

21 THE COURT: I think that's an error. We can't see
22 the whole thing. I'm guessing that the contract started on --
23 that arrow ends at February 10.

24 Is that what the idea is, Mr. Christian?

25 MR. CHRISTIAN: Correct, Your Honor. VNA was not

March 31, 2022

1992

1 under contract to do any work in Flint until February 10 of
2 2015.

3 MR. STERN: I hear you. But that's argument.

4 THE COURT: Right. So let's just leave the arrows
5 off and stuff. We've got the VNA signs the contract.

6 So that's good. That's fair.

7 MR. CHRISTIAN: So and just to be clear, because I
8 want to make it clear after Mr. Stern made his point --

9 THE COURT: But just -- it's his point is overruled.
10 So now go to your next question.

11 MR. CHRISTIAN: Thank you.

12 THE COURT: We've got it resolved.

13 MR. CHRISTIAN: Thank you, Your Honor.

14 BY MR. CHRISTIAN:

15 Q. So let's turn to Tab 18, Plaintiffs' Exhibit 53.

16 You've seen this Exhibit 53 before, haven't you?

17 A. Yes. Not recent. Yes, I have seen it.

18 Q. Okay. And so this is a deck, a presentation, a PowerPoint
19 presentation from a meeting where Veolia gave a presentation on
20 February 18 of 2015; is that correct?

21 A. Yes, that sounds right.

22 Q. And you were there?

23 A. Yes, yes, I was.

24 Q. And various employees of Veolia were there?

25 A. Yes.

March 31, 2022

1993

1 Q. And Jeffrey Wright of the KWA, was he there?

2 A. I don't -- I don't recall. I mean, I wouldn't be
3 surprised if he was.

4 Q. And what business would he have there about a meeting
5 about --

6 THE COURT: Well --

7 MR. CHRISTIAN: -- based on your knowledge?

8 THE COURT: If you -- he wasn't even sure if he was
9 there, so he certainly wouldn't know what his purpose would
10 be.

11 BY MR. CHRISTIAN:

12 Q. Did you invite Mr. Wright to the meeting, to your
13 recollection?

14 A. I mean, you put it that way, it makes me wonder if I did.
15 I don't recall one way or the other. Him and I were certainly
16 in conversation about, you know, these issues. This was very
17 high profile challenge and presentation so.

18 Q. So you communicated with Mr. Wright about the Flint Water
19 Crisis?

20 A. Yeah, yes. Generally, yes. That's -- again, if there's
21 an email or something that could refresh my memory.

22 Q. So yesterday -- so let's first turn to page 3. And you
23 see at the top, it says -- I'm representing it says, "Everybody
24 is checking the safety of the water."

25 Did I read that correctly?

March 31, 2022

1994

1 A. Yes.

2 Q. And the next line says, "City, state, news media,
3 universities, and other groups."

4 Did I read that correctly?

5 A. Yes.

6 Q. Based on your experience at the time, is that an accurate
7 representation of the parties you knew of were looking at the
8 water or talking about it?

9 A. That's what I remember being discussed.

10 Q. Now, below that, it says, "Safe equals compliance with
11 state and federal standards and required testing."

12 Did I read that correctly?

13 A. Yes.

14 Q. And you saw this slide during that meeting of February 18
15 of 2015, correct?

16 A. Yes, I sure did.

17 Q. And the next bullet says, "More than 20,000 tests are
18 required annually for the city."

19 Is that a number that you're familiar with, based
20 upon your time as mayor of the City of Flint?

21 A. You know, I wasn't recalling that number. But I'm sure
22 that was the case.

23 Q. So were you aware at the time, did anyone ever tell you
24 that Veolia went to the City of Flint and asked for records of
25 its lead testing results?

March 31, 2022

1995

1 A. Not that I recall.

2 Q. When you were testifying about going to outside
3 consultants, you mentioned that you wanted to be efficient,
4 right? We talked about it a little earlier today.

5 A. Yes.

6 Q. You didn't want to reinvent the wheel?

7 A. Right.

8 Q. So would it have saved money, based on your understanding
9 of how the process worked for VNA, to request existing records
10 about lead testing from the City of Flint?

11 A. Yes. That sounds like a reasonable part of this work.

12 Q. And at the time you were at this meeting, what, if any,
13 understanding did you have about test results in the City of
14 Flint with respect to lead and other contaminants?

15 A. So I knew we had been out of compliance with the TTHMs.
16 And the public notice went out. We've talked about that.
17 There was work underway.

18 There would be future testing. That standard was
19 based on averaging, you know, some number of quarterly tests.
20 And, you know, I knew the city did routine household lead
21 tests. And had done -- you know, as far as I knew, for many
22 years.

23 Q. Okay. And so at this point on February 18 of 2015, as
24 we've talked about earlier, you had read -- you had seen an
25 email about a positive lead test or a lead test result from the

March 31, 2022

1996

1 University of Michigan Flint on February 9, correct?

2 A. Yes. The emails, the news story.

3 Q. And between that time on February 9 and this meeting on
4 February 18, 2015, did you ask Mr. Croft for any results about
5 lead testing done in Flint?

6 A. No, I did not.

7 Q. Had you asked Mr. Glasgow for any results of lead testing
8 done for the City of Flint?

9 A. No.

10 Q. Had you asked Mr. Ambrose for any results from lead
11 testing done in Flint?

12 A. No.

13 Q. And when you were at this meeting -- and you testified
14 yesterday that Mr. Gadis said the water was safe, right?

15 Do you remember testifying about that at this
16 meeting?

17 A. Was that this same date? I know there were some different
18 meetings.

19 Q. So if I represent to you that at this meeting, it
20 occurred, would you say that you do recall that?

21 A. Yes. If those are the same dates, then yes.

22 Q. So at that meeting, you heard that the water is safe?

23 A. Yes.

24 Q. And then you heard that safe equals compliance with state
25 and federal standards and required testing, correct?

March 31, 2022

1997

1 A. Yes. And that was my understanding at the time.

2 Q. So it was -- it wasn't absolute -- it wasn't absolutely
3 safe, to your understanding, correct?

4 A. No, never absolutely safe --

5 Q. In fact --

6 A. -- safe.

7 Q. In fact, earlier you testified that essentially that
8 you're smart enough to know that things aren't perfect in the
9 world with respect to water and other results, correct?

10 A. Yeah. I think I commented about, you know, if you make
11 some changes, and there will be improvements, but something's
12 not -- something's not just going to go away.

13 Q. So let's turn back one page. So at the bottom, it says,
14 "Items of note."

15 Do you see that?

16 A. Yes.

17 Q. And then the first bullet below that says, "Not in scope."
18 Did I read that correctly?

19 A. Yes.

20 Q. And then there's a dash that says, "Studying why the
21 change from DWSD or the history of the utility."

22 Did I read that correctly?

23 A. Yes.

24 Q. And this was about one week into Flint's work -- excuse
25 me -- Veolia's work in Flint, correct?

March 31, 2022

1998

1 A. Yes.

2 Q. And Mr. Ambrose was there.

3 Did he correct VNA when this slide went up?

4 A. Not that I recall.

5 Q. He didn't say the scope is larger than that, did he?

6 A. No.

7 Q. And you didn't say the scope is larger than that, did you?

8 MR. STERN: Objection. What scope?

9 THE COURT: I don't know.

10 BY MR. CHRISTIAN:

11 Q. The scope of what VNA is doing in Flint with its \$40,000
12 engagement.

13 A. Yeah, I don't remember any --

14 THE COURT: Were you aware that -- did you think that
15 somebody had asked Veolia to do a historical review of the
16 utilities in Flint?

17 THE WITNESS: No.

18 THE COURT: Okay.

19 BY MR. CHRISTIAN:

20 Q. Did you ask anyone whether VNA was supposed to study why
21 the change occurred?

22 A. I don't recall that being discussed or in the scope. I
23 think I took this to be accurate.

24 Q. And so looking at Slide 2, looking at Week 1, it says --
25 the first bullet I'm going read, "Provide a review of current

March 31, 2022

1999

1 actions."

2 Did I read that correctly?

3 A. Yes.

4 Q. The second bullet says, "Engage staff, visit facilities,
5 and analyze data."

6 Did I read that correctly?

7 A. Yes.

8 Q. And the third bullet is, "Make interim report"; is that
9 correct?

10 Did I read that correctly?

11 A. Yes.

12 Q. And this was an interim report meeting; is that correct?

13 A. Yeah. I think it was on the way to the interim report.

14 This was an agreed upon step was to present it to the Flint
15 Public Works Committee, which is actually the city council's
16 Public Works Committee. So this was conducted under the Open
17 Meetings Act in the city council chambers.

18 Q. Okay. So I'd like to bring up our timeline again to add
19 that on February 18, 2015, VNA gave a presentation to the
20 public. And it stated, "Not in scope studying why the change
21 from DWSD."

22 Okay. So yesterday you testified that after this
23 meeting, you saw newspaper articles about the meeting,
24 correct? It was in the media.

25 A. Yes.

March 31, 2022

2000

1 Q. And I believe you testified that some of the media
2 reported that someone at the meeting said, "The water is safe";
3 is that correct?

4 A. Yes.

5 Q. And do you recall if the media said that safe equals
6 compliance with laws and regulations in the newspapers?

7 A. I don't know if that was included in those articles or
8 not.

9 Q. Do you recall if you ever contacted any media outlets and
10 said, "Make sure that you say that safe equals compliance with
11 laws and regulations"?

12 A. I had a lot of conversations with media about matters like
13 that. I'm sure I would have covered it at different points.
14 At the time of this meeting, I don't have a recollection one
15 way or the other.

16 Q. Do you remember telling Mr. Lorenz that he needed to reach
17 out to media outlets and tell them that this report said that
18 safe equals compliance with laws and regulations?

19 A. I don't remember having a conversation like that with
20 Mr. Lorenz, no.

21 Q. So yesterday -- so let me ask you a couple of questions
22 about your knowledge of testing in general with respect to the
23 City of Flint's water supply.

24 You've testified several times about your family
25 drinking the water, the tap water, correct?

March 31, 2022

2001

1 THE COURT: I just want to draw to your attention a
2 motion in limine on this subject.

3 But go ahead if you think this question is within --

4 MR. CHRISTIAN: He's talked about it several times,
5 Your Honor.

6 THE COURT: Yes, he has. Okay.

7 BY MR. CHRISTIAN:

8 Q. And you've testified that your parents drank it, drank the
9 water as well as -- as well?

10 A. Yes.

11 Q. And you knew that testing was going on. Testing was being
12 conducted on the water?

13 A. Yes.

14 Q. What was your level of confidence in the water testing?

15 A. It was good. I took what was being described to me, you
16 know, as accurate, these statements about meeting standards and
17 being safe.

18 Q. Okay. Did there come a time when your faith in the
19 testing decreased?

20 A. Yes.

21 Q. And when was that?

22 A. Well, in August-early September 2015. You know, I became
23 aware, actually from an ABC12 reporter, that the MDEQ had
24 notified the City of Flint that it was being required to add
25 optimized corrosion control.

March 31, 2022

2002

1 I immediately brought together the city administrator
2 and the public works director, so Ms. Natasha Henderson and
3 Mr. Croft, asked when the city had received that notice, what
4 had prompted that notice.

5 Was informed about these two cycles of household lead
6 testing, how those results had come back high.

7 And in response to that, right around that time, made
8 statements of what the city was going to do to get that
9 optimized maximum corrosion control in places, you know, fast
10 as humanly possible.

11 Dr. Marc Edwards from Virginia Tech was also in
12 communication with me. He was describing, you know, his
13 concerns about different, like, testing methods, how those can
14 lead to different results.

15 So around that time is when I became really
16 concerned.

17 There had been a memo I had become aware of a few
18 months earlier than that from a staff member at the EPA,
19 Miguel Del Toral, and I had --

20 Q. We'll get to that.

21 A. Okay. Well --

22 THE COURT: Just -- do you want him to finish his
23 answer to your question or should --

24 MR. CHRISTIAN: I realize that I must have been
25 unclear. Because I thought I asked him when did his level of

March 31, 2022

2003

1 confidence in the testing decrease.

2 THE COURT: I'm hearing that answer. So I'll permit
3 him to continue answering. He's telling us what caused a
4 shift in his understanding.

5 THE WITNESS: So it was in that August-September
6 timeframe.

7 BY MR. CHRISTIAN:

8 Q. August-September.

9 A. Of 2015. And I had also been aware of some -- an EPA
10 staff's concerns about our testing that I had made an effort to
11 follow up on a few months earlier than that.

12 Q. So I'd like you to turn to Tab 21, which is VNA
13 Exhibit 1647. And this is already in evidence. So we're going
14 to put it up on the screen.

15 And so you -- you remember testifying about this
16 earlier in the trial, correct?

17 A. Yes.

18 THE COURT: Do you know the exhibit number that's
19 already in evidence?

20 MR. CHRISTIAN: Yes. It's VNA -- well, the one in
21 evidence --

22 THE COURT: Yeah. That's what I want. I want to
23 make sure the record reflects the actual exhibit that's been
24 received. You can let me know later.

25 MR. CHRISTIAN: Okay. We'll do that, Your Honor.

March 31, 2022

2004

1 BY MR. CHRISTIAN:

2 Q. So let's turn to the page that starts talking about
3 priorities or conclusions the next steps. If I get there
4 before you, I will mention it to you. Page 9.

5 THE COURT: And so for the jury, what this is, is the
6 Veolia report dated March 12 of 2015.

7 Now what page? Page 9. Okay.

8 BY MR. CHRISTIAN:

9 Q. And let's actually turn -- so there -- left-hand column at
10 the top is the word "priority."

11 Did I read that correctly?

12 A. Yes.

13 Q. The center column is "Action."

14 Did I read that correctly?

15 A. Yes.

16 Q. The next column, the third column, "Annual operating
17 costs."

18 Did I read that correctly?

19 A. Yes.

20 Q. And, "One-time capital costs."

21 Did I read that correctly?

22 A. Yes.

23 Q. And so if you turn the page to 10 at the top, and I'm
24 going to -- in the first -- the one that's being highlighted on
25 the monitor. There's this language.

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2005

1 "Contract with your engineer and initiate discussions
2 with the state on the addition of a corrosion control
3 chemical."

4 Did I read that correctly?

5 A. Yes.

6 Q. "This action can be submitted and discussed with the state
7 at the same time as other chemical and filter changes saving
8 time and effort. A target dosage of .5 milligrams per liter
9 phosphate is suggested for improved corrosion control."

10 Did I read that correctly?

11 A. Yes.

12 Q. So you testified a lot about what your understanding of
13 that was, correct?

14 A. Yes.

15 Q. And you made the point that you did not see "lead," the
16 word "lead" in this report, correctly?

17 A. Correct.

18 Q. You read the report forwards, correct?

19 A. Yes.

20 Q. And you testified that you read it backwards, correct?

21 A. Yes.

22 Q. So -- but you didn't contact your engineer, did you?

23 A. I don't recall that I did.

24 Q. You testified earlier today that it is part of the job
25 description, it is part of your required duties of the mayor to

March 31, 2022

2006

1 be able to consult with people who have expertise that you
2 don't, correct?

3 A. Yes, yes.

4 Q. You have -- so you have been in a water crisis since
5 April 25 of 2014.

6 This is -- what day was this report?

7 A. March. March 12. And there's a very similar draft report
8 maybe a few weeks earlier.

9 Q. So at this point in time after being 11 months into the
10 Flint Water Crisis, you're saying that you did not check with
11 your engineer?

12 A. I did not.

13 Q. Did you check with Mr. Glasgow?

14 A. No.

15 Q. You identified Mr. Warren Green in the court, correct?

16 So you recognized him?

17 A. Yes.

18 Q. Did you tell anyone to contact Mr. Green?

19 A. I don't -- no, I didn't.

20 Q. Did you tell anyone to contact the state?

21 A. Yes. That would have been -- think about the emergency
22 manager, the public works director, myself, contacting the
23 MDEQ. That was -- I mean, that was a regular part of our
24 communications.

25 I don't recall anything specific about, you know,

March 31, 2022

2007

1 this corrosion control.

2 Q. So if I recall correctly, you had a notation on
3 February 13 that you made corrosive water.

4 Am I recalling that correctly?

5 A. Yes. In that comment from Rob Nicholas.

6 Q. Right.

7 A. Yes.

8 Q. And this was March 12 of 2015, this report?

9 A. Yes.

10 Q. So that's a month, correct?

11 A. Yes.

12 Q. And in that month's time between writing a note about
13 corrosive water and getting this priority about corrosion
14 control, did you do any research on your own to understand what
15 corrosion control was for?

16 A. I don't remember doing independent research. I understood
17 it had to do with the aesthetics, the color, the odor, the
18 taste. That's what I was hearing from Mr. Croft. That's what
19 I recall from Veolia discussions and saw in the report.

20 That was my understanding.

21 Q. And when you saw this, did you say to anyone at Veolia, "I
22 was on an email on February 9 that mentioned the word 'lead.'
23 What are you going to do to address that?"

24 Did you ask that question?

25 A. No, no, I didn't.

March 31, 2022

2008

1 Q. I'm going to show you -- take a look at Tab 22 of your
2 binder. And just tell me if you -- it's VNA -- marked for
3 identification VNA Exhibit 2126.

4 Do you recognize that exhibit?

5 THE COURT: Is this a demonstrative exhibit or is
6 it --

7 MR. CHRISTIAN: It's actually a document, as I
8 understand it, that was drafted. This may not be the best
9 copy, actually.

10 THE COURT: Drafted for the trial or at the --

11 MR. CHRISTIAN: Drafted by someone -- well, I'm not
12 going to testify about this, Your Honor.

13 BY MR. CHRISTIAN:

14 Q. Do you recognize this at all?

15 A. I'm familiar with some of this content. I don't remember
16 this -- I don't remember this document, or I don't remember a
17 date.

18 Q. So turn to Tab 23 which is marked for identification as
19 VNA trial Exhibit 2127.

20 A. Okay.

21 Q. Did there come a time when the treasury department asked
22 questions about VNA's recommendations?

23 Do you recall that?

24 A. I don't remember anything specific about Veolia. There
25 were discussions about technical matters reconnecting to -- I

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2009

1 see the date on here. So I'm thinking this was part of the --
2 part of the discussions around the possibility of connecting to
3 DWSD, which Dr. Mona Hanna-Attisha and others were calling for.

4 I -- that's what I remember.

5 MR. STERN: Your Honor, I object just to the use
6 of --

7 THE COURT: I don't think he's offering this.

8 MR. STERN: Okay.

9 THE COURT: So we'll move on to the next question.

10 BY MR. CHRISTIAN:

11 Q. So I'd like to direct your attention back -- or keep your
12 attention back in March of 2015.

13 Did there come a time when the city council decided
14 to make a vote with respect to returning to the DWSD?

15 A. Yes.

16 Q. And what did they vote?

17 A. The city council voted to reconnect to DWSD. I don't
18 recall the number, the for and against, but it was pretty
19 strongly for.

20 Q. And at that point in time, did you make a statement about
21 returning?

22 THE COURT: I don't know what point in time that was
23 yet. I don't --

24 BY MR. CHRISTIAN:

25 Q. What month -- this was in March of 2015?

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2010

1 A. March of 2015, yes.

2 THE COURT: Okay.

3 BY MR. CHRISTIAN:

4 Q. And when the city council voted to return to the DWSD, did
5 you make a statement with respect to that?

6 A. Yes.

7 Q. And what was your statement?

8 A. My statement was that I was not in favor of reconnecting
9 to Detroit. We had safe water that met the standards. And it
10 was something that I thought deserved further examination and
11 research.

12 That was -- that last part was where the emergency
13 manager and I differed. So we agreed on the first two points.
14 The emergency manager's statements were to that same effect.

15 And then my additional part being, responsive to the
16 way city council was looking at this, was that I believed it
17 needed to be further, you know, examined and researched.

18 Q. Further examined. So as of that point March of 2015, you
19 were against switching back to the DWSD?

20 A. That's right. And I had made my position known publicly.
21 I believe that was important for me.

22 Q. And in making your position known publicly, did you
23 consult with anyone to see if there's any information, new
24 information with respect to the wisdom of switching back to the
25 DWSD at the time?

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2011

1 A. I don't recall that I had anything new at that moment. I
2 was at the city council meeting, so I would have heard their,
3 you know, comments and questions and so on.

4 Q. And Mr. Ambrose, you mentioned that he was against it,
5 correct?

6 A. Yes. Against reconnecting to Detroit.

7 Q. Yes.

8 A. Yes.

9 Q. And, in fact, he said that reconnecting to Detroit would
10 be incomprehensible; is that correct?

11 A. Yes. I remember him saying that.

12 Q. And we're going to pull up the timeline.

13 A. Okay. Good.

14 Q. Fair to say the date was approximately March 24 of 2015.

15 Does that ring a bell?

16 A. The end of March sounds right, yeah. There would be
17 official city records on that meeting.

18 Q. So we're going to add, "EM Ambrose calls going back to
19 DWSD incomprehensible."

20 MR. STERN: Your Honor, it's already up. And so it
21 is what it is. But if we're -- he asked the question, "Does
22 that ring a bell?"

23 And he said, "Yeah, sounds right. End of March."

24 So we're going to put up March 24.

25 THE COURT: Let's see if we can -- can you --

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2012

1 MR. CHRISTIAN: We can put late March if Mr. Stern
2 would prefer in the --

3 MR. STERN: It's already done, and it's fine. But
4 just going forward --

5 THE COURT: It still matters to me if it's accurate.

6 Mr. Walling, do you recall if it would have been
7 March 24, 2015?

8 THE WITNESS: I don't recall. I'd need to see a
9 document to refresh my memory.

10 THE COURT: Maybe we have a document.
11 Do we have one, Mr. Christian?

12 MR. CHRISTIAN: We'll offer one at another time, Your
13 Honor. We will modify that.

14 THE COURT: Okay. For now, we'll say late March.
15 And then later if we know when it was, we can change it.

16 BY MR. CHRISTIAN:

17 Q. And at the time of the city council's vote to return to
18 the DWSD, that wasn't the first time the idea had come up; is
19 that correct?

20 A. Correct.

21 Q. In fact, at the time when you spoke with the governor and
22 his chief of staff, they said -- someone on that phone call
23 said to you that they can't go back to the DWSD; is that
24 correct?

25 A. Yes. That was how I took it. You know, that was without

March 31, 2022

2013

1 quotes on those notes. But that was what I took from the
2 conversation.

3 Q. And your office wasn't far from Emergency Manager Earley's
4 during the time of his role as emergency manager, correct?

5 A. Correct.

6 Q. And during that time, did you ever hear him say that he
7 was ready to go back to the DWSD?

8 A. I did not ever hear Mr. Earley say that.

9 Q. And did you ever tell him that you thought you should go
10 back to the DWSD?

11 A. I did not.

12 Q. And one of the reasons that you were against going back to
13 the DWSD in March of 2015 was because you trusted the water
14 testing that was going on at the time; is that correct?

15 A. Yes.

16 Q. So I'd like to switch to another topic.

17 You mentioned the name a couple of times, LeeAnne
18 Walters; is that correct?

19 A. Yes.

20 Q. And there came a time when you learned that she had high
21 lead levels detected in her home, correct?

22 A. Yes.

23 Q. But before that, you heard other information about
24 Ms. LeeAnne Walters's family, correct?

25 A. Yes. Initial concerns were rashes.

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2014

1 Q. So we're going to turn to Tab 25, which has been premarked
2 as VNA Exhibit 1027.

3 This is an email that is from Dayne Walling at the
4 top; is that correct?

5 A. Yes.

6 MR. CHRISTIAN: Your Honor, we move to admit VNA
7 Exhibit 1027 into evidence.

8 MR. STERN: No objection.

9 MR. ERICKSON: No objection.

10 THE COURT: Okay. It's received.

11 (VNA Exhibit No. 1027 Admitted Into Evidence.)

12 BY MR. CHRISTIAN:

13 Q. And if you go to the second page of this email, it is from
14 Howard Croft, correct?

15 A. Yes.

16 Q. On Thursday, February 5, 2015, at 3:44 P.M., correct?

17 A. Yes.

18 Q. And that's to Henry -- or James Henry; is that correct?

19 A. Yes.

20 Q. Who's James Henry?

21 A. He's the environmental public health staff person for the
22 Genesee County Health Department.

23 Q. And let's just go through, and I'm going to read this and
24 ask you if I read it correctly.

25 So it begins with, "Jim, I would like to connect you

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2015

1 with another person who is reporting a rash on their child."

2 Did I read that correctly?

3 A. Yes.

4 Q. "LeeAnne Walters has spoken to me several times and also
5 has a notice from a doctor asserting that her son breaks out
6 when he is in a bath with the city water."

7 Did I read that correctly?

8 A. Yes.

9 Q. "I am hoping that you can work with her as well in
10 connecting with her doctor and supplying any needed data that I
11 forwarded to you that can help determine the cause."

12 Did I read that correctly?

13 A. Yes.

14 Q. "I thought this might be something that Dr. Rose could
15 shed some light on, as well."

16 Do you recognize the name Dr. Rose?

17 A. Yes. I don't know if I would have on, like, February 5.
18 But she's a professor at Michigan State University. I believe
19 she's still there. Studies water systems.

20 Q. "I am doing" -- I'm continuing -- "I am including our lab
21 technician Mike Glasgow and plant supervisor Brent Wright on
22 the email in case there is any additional information that is
23 needed. I would like to keep them in the loop of the
24 situation."

25 Did I read that correctly?

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2016

1 A. Yes.

2 Q. And I mention who it's to. If you look in the CC line,
3 let's see who else it went to. So it's copied L. Walters.

4 Do you have any -- it's your understanding that's
5 LeeAnne Walters's email address?

6 A. That's my understanding.

7 Q. Michael Glasgow, correct?

8 A. Yes.

9 Q. Brent Wright, correct?

10 A. Yes.

11 Q. And Daugherty Johnson, who's also known as Duffy Johnson,
12 correct?

13 And so let's turn back to the first page.

14 Mr. Henry writes back; is that correct?

15 A. Yes.

16 Q. And so let's -- so it starts maybe just below a third of
17 the page down with, "Howard," correct?

18 A. Yes.

19 Q. "I want to make sure there are no misunderstandings. The
20 Genesee County Health Department has attempted to obtain
21 specific information regarding the water -- Flint water
22 distribution system from your office since November 2014."

23 Did I read that correctly?

24 A. Yes.

25 Q. "Your office has not provided a return phone call or

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2017

1 response to emails."

2 Did I read that correctly?

3 A. Yes.

4 THE COURT: You can go through -- you don't have to
5 say it after every sentence. Let's just have the -- this will
6 be for the rest of our trial.

7 If you want to read something, do it. And then we'll
8 turn -- and that's for everybody.

9 Then we'll turn to the witness and say, "Did I read
10 that correctly?"

11 MR. CHRISTIAN: Okay.

12 THE COURT: We try to speed it up here. So -- but
13 that's for everybody, not just for Mr. Christian.

14 MR. CHRISTIAN: Well, okay.

15 BY MR. CHRISTIAN:

16 Q. "A FOIA request was sent electronically and mailed to your
17 office on January 27 of 2015, in an attempt to obtain
18 information. The response from your office on February 4 of
19 2015 did not include any of the information that was requested.

20 "I am still hopeful that we can work collaboratively
21 to protect the health of the community and resolve any issues
22 with the Flint water supply. Respectfully, Jim."

23 Now, did I read that correctly?

24 A. Yes.

25 Q. So let's go up to the distribution for this email. It's

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2018

1 from James Henry rather.

2 And in to-line, it's Howard Croft?

3 A. Yes.

4 Q. And other recipients are Michael Glasgow, Brent Wright,
5 Duffy Johnson, Daugherty Johnson, Dayne Walling, Mark Valacak?

6 A. Valacak.

7 Q. And Suzanne Cupal?

8 A. Yes.

9 Q. And so you received this email.

10 Mr. -- is it fair to infer that Mr. Henry added you
11 to this email chain?

12 A. Yes. That's how I took it when I received it, yes.

13 Q. And so at 6:06, so 36 minutes later, you wrote, "Howard, I
14 am stunned by this email from the health department. What is
15 he referring to?"

16 Did I read that correctly?

17 A. Yes.

18 Q. So when you received this email, did you contact Mr. Henry
19 about the rashes?

20 A. No, I did not.

21 Q. Did you contact Mr. Croft about the failure to respond to
22 this information request?

23 A. Yes, I did. And I raised it with Mr. Ambrose, who you see
24 is on my response. Because Howard is reporting to the
25 emergency manager at this time.

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2019

1 Q. And you were seeing Howard, what, weekly in executive
2 meetings at this point?

3 A. Sometimes he was at executive meetings. Then we had this
4 larger general staff meetings that would have been, you know,
5 12, 15 people.

6 Q. And when you saw this email, you didn't contact
7 Ms. Walters, did you?

8 A. I didn't. She had -- she inquired in my office, as well.
9 And I think in my testimony yesterday or the day before, I've
10 often thought back to what would have happened if I had
11 followed that up further. I did not speak with her further at
12 that time.

13 Q. And at this time, you didn't request records related to
14 rashes in the City of Flint since the switchover to the Flint
15 River; is that correct?

16 A. I raised those -- I raised those issues with the emergency
17 manager and Mr. Croft.

18 Q. And after you raised those issues with the emergency
19 manager and Mr. Croft, you didn't do anything else related to
20 this email at that time?

21 A. At that time, like those maybe couple of days?

22 Q. Yes.

23 A. I don't recall I did anything else.

24 Q. When did you next -- when did you follow up with
25 Mr. Croft? Well, let me rephrase that.

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2020

1 Did you follow up with Mr. Croft in the following
2 week about this complaint?

3 A. Yeah. I believe approximately once per week for a few
4 weeks Mr. Croft was updating me on what the city personnel were
5 doing and how they were working with Ms. LeeAnne Walters.

6 Q. So with the Court's permission, we would like to bring up
7 the timeline.

8 THE COURT: Let's just discuss what we're putting on
9 it.

10 MR. CHRISTIAN: And to add February 5, 2015, Walters
11 tells Croft her son is breaking out from rashes from bath
12 water.

13 THE COURT: Any -- go ahead. Go ahead.

14 MR. STERN: It's fine.

15 THE COURT: That's pretty close.

16 MR. CHRISTIAN: So, Your Honor, at this point, I'm
17 about to shift gears a little bit to another topic. So if you
18 want to take a break now, this will be a good moment.

19 THE COURT: Let's do that. All right. Please rise
20 for the jury. We'll take about a 15 minute break.

21 (Jury Out)

22 THE COURT: Okay. We will be in recess.

23 (Brief Recess)

24 THE COURT: See our jury's all the way upstairs. But
25 at least in criminal cases, if we have a defendant in custody

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2021

1 with shackles, we have to make sure they're seated. And so at
2 least we don't have that complication here. Because we can't
3 allow the jury to see the defendant is in custody.

4 And then inevitably, the defense lawyer says, "But my
5 client's in custody." And you spent three weeks. But anyway.

6 THE CLERK: All rise for the jury.

7 (Jury In)

8 THE COURT: Okay. Please be seated. Go ahead,
9 Mr. Christian.

10 MR. CHRISTIAN: Thank you, Your Honor.

11 BY MR. CHRISTIAN:

12 Q. So I'd now like you to turn to Tab 26 of your binder. It
13 is -- has been identified, marked for identification as VNA
14 trial Exhibit 1287.

15 You may recall this, Mayor Walling -- Mr. Walling, as
16 Exhibit 70 from your deposition.

17 A. Okay.

18 Q. Do you recall reading it during your deposition?

19 A. It did look familiar. So that's helpful. Thank you.

20 Q. And it's an email chain; is that correct?

21 A. Yes, it is.

22 Q. And the earliest date on this email chain is February 24,
23 2015, correct?

24 A. Yes.

25 Q. And the first section of the email is from Michael

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2022

1 Glasgow; is that correct?

2 A. Yes.

3 Q. And as you recall from your deposition, this was an email
4 about a lead finding at a City of Flint resident's home; is
5 that correct?

6 THE COURT: Mr. Christian, is he on these emails?

7 MR. CHRISTIAN: He is not, Your Honor. But he has
8 seen it before during his deposition.

9 THE COURT: I know. I know. You mentioned that,
10 Exhibit 70. But an exhibit at a deposition is not necessarily
11 admitted at the trial.

12 So I'm trying to understand has this already been
13 admitted in our case?

14 MR. CHRISTIAN: It has not, Your Honor.

15 THE COURT: Okay. So we'll have to lay a foundation
16 for this witness being the one who admits -- through whom it
17 is admitted.

18 MR. CHRISTIAN: Certainly.

19 BY MR. CHRISTIAN:

20 Q. So when you -- roughly the time February 24 of 2015, there
21 came a time when Howard Croft informed you that there was a
22 high lead test result at the home of LeeAnne Walters; is that
23 correct?

24 A. Yes. Around that time.

25 Q. And, in fact, he informed you that the high lead reading

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2023

1 test result was approximately what, 104 parts per billion?

2 A. Yes. Very high.

3 Q. And the maximum contaminant level for lead is 15 parts per
4 billion; is that correct?

5 A. Yes. The way it's calculated across multiple households
6 at a percentage, as I understand it. So I think that's what we
7 always say is -- we always say 15 parts per billion.

8 Q. And so I'm trying to do the math in my head. But that
9 would be roughly 104 parts per billion will be roughly seven
10 times the limit; is that correct?

11 A. Yes.

12 Q. And Mr. Croft, as you understood it, when he communicated
13 to you had communications with other members at the staff at
14 the Flint Water Treatment Plant, correct?

15 A. Yes.

16 Q. He had communicated with Michael Glasgow?

17 A. I don't know who he would have communicated with person by
18 person. But I know he was getting his information from city --
19 you know, the city personnel who was working on this.

20 Q. And there came a time based upon and following up with
21 Mr. Croft's briefing of you about this where he -- where you
22 actually came into contact with this email; is that correct?

23 A. I don't -- I don't have a recollection of that. I know we
24 were discussing what you went over, that I was knowledgeable of
25 that information.

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2024

1 Q. Okay. So she had a high lead test result, the family had
2 a high lead test result that was seven times the limit.

3 And when you learned that information, VNA was still
4 working there, right?

5 A. Yes.

6 Q. And it was two weeks to the day after VNA signed its
7 contract to do the work, correct?

8 A. Yes.

9 Q. And you didn't contact VNA to tell them about this result,
10 did you?

11 A. I did not.

12 Q. You didn't contact Michael Glasgow after Howard Croft
13 briefed you about this lead result?

14 A. I recall communicating with just Mr. Howard Croft about
15 it. So no to Glasgow.

16 Q. And you didn't go contact Ms. LeeAnne Walters after this,
17 learning of this test result, did you?

18 A. I did not.

19 Q. You didn't contact the MDEQ?

20 A. I did not.

21 Q. And the gentleman you identified in the courtroom,
22 Mr. Warren Green, you didn't contact him, did you?

23 A. I did not.

24 Q. I'm going to refer to Plaintiffs' Exhibit 1318. It's been
25 admitted into evidence, I believe, yesterday.

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2025

1 THE COURT: What tab number?

2 MR. CHRISTIAN: It's not a tab. Mr. Stern passed it
3 out yesterday, I believe. As a single piece of paper. We can
4 pull it up, too. So Plaintiffs' Exhibit 1318.

5 BY MR. CHRISTIAN:

6 Q. And so this is an email -- maybe it was admitted prior to
7 this.

8 But in any event, this email is from Howard Croft to
9 Jerry Ambrose, correct?

10 A. Yes.

11 Q. And the date on the email is February 24 of 2015, correct?

12 A. Yes.

13 Q. That's the same date that Mr. Croft talked to you about
14 Ms. LeeAnne Walters's test results, lead test results, right?

15 A. I know it was around that time.

16 Q. Around that time.

17 A. I don't have an exact day, but yes.

18 Q. And yesterday, Mr. Stern showed you this email, correct?

19 And I'm just going to read it. I don't want to read
20 everything. But it says, "Jerry, I just spoke with Rob from
21 Veolia and his exact statement is that the city does not have a
22 water issue but a political issue."

23 Did Mr. Croft tell you about?

24 MR. STERN: Objection. The document speaks for
25 itself. It's an email from Mr. Croft to the mayor. So he

March 31, 2022

2026

1 clearly told him.

2 THE COURT: Well, maybe -- is your question: Did you
3 have a separate conversation about this before the email?

4 BY MR. CHRISTIAN:

5 Q. Did you have any additional conversations outside of this
6 email with Mr. Croft?

7 A. I don't know.

8 Q. And so you're saying that with respect to the email that
9 you looked a moment ago with respect -- talking about
10 Ms. LeeAnne Walters's lead test results, Howard Croft did not
11 email you about that on February 24.

12 A. Not that I can recall. I remember us having a
13 conversation around that time. And all my city emails are
14 public record. I don't know.

15 Q. So I remember you testifying that you didn't need
16 political advice from VNA; is that fair to say?

17 A. Yes.

18 Q. But you needed water advice from VNA, right?

19 A. Yes.

20 Q. But you didn't tell them on the very day you saw this
21 email or in that time period that there was lead found at a
22 resident's home, correct?

23 A. Correct.

24 Q. Did you tell Mr. Glasgow to make sure that Veolia was told
25 about this lead test result?

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1 A. No.

2 Q. Did you tell Mr. Bincsik to make sure that Veolia was told
3 about this lead test result?

4 A. No.

5 Q. Did you tell Mr. Croft to make sure that VNA was told?

6 A. No.

7 Q. Did you tell Mr. Ambrose?

8 A. No. I don't recall asking or, you know, directing anyone
9 to do that.

10 Q. So I'm going to now turn to Tab 27, VNA Exhibit 1401.

11 Did you have time to turn there, Mr. Walling?

12 THE COURT: He has time. He'll be --

13 MR. ERICKSON: Which tab?

14 MR. CHRISTIAN: It's Tab 27.

15 MR. ERICKSON: Thank you.

16 THE WITNESS: Yes, I have Tab 27, yes.

17 BY MR. CHRISTIAN:

18 Q. And do you recognize this email?

19 MR. STERN: There's about five emails. I'm not sure
20 which one you're asking him about.

21 MR. CHRISTIAN: VNA trial Exhibit 1401.

22 MR. STERN: So I'm just trying to be helpful --

23 MR. CHRISTIAN: This document, if you look at the
24 top, it says from Elizabeth Beth Murphy.

25 BY MR. CHRISTIAN:

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1 Q. In to-line, do you see "Flint mayor"?

2 A. Yes.

3 Q. So this email was to you, among others?

4 A. Yes.

5 MR. CHRISTIAN: Your Honor, I move to admit VNA
6 Exhibit 1401 into evidence.

7 MR. STERN: No objection to the exhibit. I just want
8 to note that the original question said, "Do you recognize
9 this email?" And there's one, two, three -- four emails
10 contained in this exhibit.

11 THE COURT: Okay.

12 MR. CHRISTIAN: Thank you for the practice point,
13 Mr. Stern.

14 MR. ERICKSON: No objection.

15 THE COURT: No objection from LAN. Okay. Then it's
16 received.

17 (VNA Exhibit No. 1401 Admitted Into Evidence.)

18 BY MR. CHRISTIAN:

19 Q. Do you recognize this email chain, Mr. Walling?

20 A. Yes, I do.

21 Q. Thank you. So let's look at the bottom. It is -- let's
22 look at the bottom of page 3. And it says it's from a person
23 named Ronald Fonger.

24 Do you recognize that name?

25 A. I do.

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1 Q. And who is Ronald Fonger?

2 A. Ronald Fonger's a long-time Flint Journal MLive reporter.
3 And he covered, you know, quite a number of different city
4 issues, including this one. He's probably listening by Zoom
5 today, I imagine. He's been the one generally covering these
6 cases.

7 Q. And the date on this email is March 2, 2015?

8 A. Yes.

9 Q. At 8:14 A.M.?

10 A. Yes.

11 Q. And it reads as follows. "Hi, Jason. LeeAnne Walters,
12 one of the residents contacted by the city and offered the
13 chance to have her water tested has received her results.

14 "I have a copy of the official laboratory report and
15 wondered if someone discuss her results and what may be behind
16 what appears to be a high level of lead."

17 Did I read that correctly?

18 A. Yes.

19 Q. Even though there was a grammatical problem there,
20 correct?

21 A. I followed it as you read it.

22 Q. So on March 2 of 2015, VNA was still working in Flint; is
23 that correct?

24 A. Yes.

25 Q. So let's go to the second page. I apologize. Yeah. So

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1 go to the second page, and there's a message. At the top, it
2 says, "Elizabeth Murphy sent on Monday March 2, 2015, at
3 8:34 A.M."

4 And it's to Ronald Fonger, correct?

5 A. Yes.

6 Q. About LeeAnne Walters.

7 And Ms. Murphy responds, "Ron, I'll call Howard Croft
8 and see who can provide an answer to you. Liz."

9 Did I read that correctly?

10 A. Yes.

11 Q. And we'll go to the first page. And at the bottom of the
12 page, this message is from Ronald Fonger, Monday, March 2,
13 2015, at 9:53 A.M., correct?

14 A. Yes.

15 Q. And the subject is "LeeAnne Walters" to Elizabeth Murphy.

16 "Thank you. It's up on social media complete with
17 the attached illustration. So I'm trying to get good
18 information. Appreciate your help."

19 Did I read that correctly?

20 A. Yes.

21 MR. CHRISTIAN: And so let's scroll up to the top of
22 this page. Or right there. Let's stop right there.

23 BY MR. CHRISTIAN:

24 Q. And it's from Elizabeth Murphy on Monday, March 2, 2015,
25 at 11:00 A.M. to Howard Croft.

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1 "FYI"?

2 A. Yes.

3 Q. Okay. So let's go further up. And this time it's from
4 Elizabeth Murphy Monday, March 2, 2015, at 11:08 A.M. And in
5 to-line, we have Gerald Ambrose, Natasha Henderson -- and to
6 remind everyone Natasha Henderson was the --

7 A. The city administrator.

8 Q. Howard Croft and Flint mayor, which is you, correct?

9 And the first line says, "This is what I would like
10 to send back to Ron Fonger. In most cases, excessive amounts
11 of lead and copper in water can be contributed to residential
12 service lines and internal plumbing.

13 "The City of Flint water department has not detected
14 lead or copper in the Flint River or leaving the treatment
15 plant. The water department has just completed testing in
16 December 2014 on 100 residential water samples. And only two
17 of those samples were above the limit of 15 parts per billion.

18 "In cases where high lead -- high levels are
19 detected, we then attempt to test neighboring locations to
20 help isolate the cause.

21 "We continue to honor all requests for water testing
22 in homes or businesses. In the specific case of Ms. Walters,
23 the city has contacted her neighbors to ask them to submit
24 samples to have their water tested. We have not had a
25 response yet."

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1 Did I read that correctly?

2 A. Yes.

3 Q. So as of this date, you now have additional information
4 beyond what Mr. Croft told you about Ms. LeeAnne Walters,
5 correct?

6 A. Yes.

7 Q. I mean, at the very least, the information is getting out,
8 right?

9 A. Yes, certainly.

10 Q. And when you saw this email, did you tell VNA that there
11 was lead found at Ms. Walters's home?

12 A. No.

13 Q. Did you tell Mr. Croft to tell VNA that lead was found at
14 Ms. Walters's home?

15 A. No.

16 Q. Did you ask Mr. Ambrose to tell VNA about the lead
17 finding?

18 A. No.

19 Q. Did you ask Ms. Henderson to tell VNA about the lead
20 finding?

21 A. No.

22 Q. Did you tell Mr. Glasgow to tell them?

23 A. No.

24 Q. And at this point in time, did you do any research to see
25 what makes -- what corrosive water is?

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1 A. No. I don't recall I did. I -- if I may, I -- around
2 this time, I, you know, learned from Mr. Croft about this
3 lengthy service line that ran to Ms. Walters's home that I
4 previously mentioned.

5 That's what I understood, you know, rightly or
6 wrongly, to be the problem at that household.

7 Q. So I believe you testified yesterday that for each home,
8 the condition of the water is different; is that correct?

9 MR. STERN: Objection. I'm not sure he's -- I don't
10 know if that was his testimony. But I don't think he's
11 qualified to talk about water chemistry.

12 THE COURT: The condition of the water.

13 Why don't you rephrase.

14 What do you mean "condition"?

15 BY MR. CHRISTIAN:

16 Q. The quality of the water at one home can differ from the
17 quality of the water at the home right next door to it; is that
18 correct?

19 MR. STERN: Same objection.

20 THE COURT: If he knows, he can answer.

21 THE WITNESS: Yes. That's -- I think when it came
22 up, my observations, when I was out really doing a lot of door
23 knocking, having a high volume of conversations with people,
24 and it was obvious to me that, you know, household by
25 household, people had different, you know, I think I said

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1 experiences.

2 Because you might 23409 necessarily know without a
3 test. But someone's experiences with the water is very
4 different, even house to house. Not just neighborhood by
5 neighborhood. But it could even vary.

6 BY MR. CHRISTIAN:

7 Q. So at that point, you mentioned a long lead service line,
8 correct?

9 So lead service lines, based on your understanding
10 and knowledge, are buried underground, correct?

11 A. Yes.

12 Q. So unless the ground is disturbed and there's a hole, you
13 can't see a lead service line, can you?

14 A. There's one thing I can add. Right. One cannot observe
15 their service line from -- what I'm trying to get to is there's
16 two parts to the service line. There's a public side and a
17 private side.

18 The public side of the service line, which, you know,
19 usually we say in Flint, like, goes to about the sidewalk,
20 there's no way for a house -- you know, a person in a household
21 to observe the public line.

22 But in most cases, you can -- in the private side,
23 you can see what the pipe is going into your water meter, and
24 you can actually look at that, and, you know, based on what
25 copper looks like, what lead looks like, what other materials

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1 look like, you may have some information about the private
2 side of the service line.

3 Sometimes those two things just get put together, and
4 it gets talked about as a service line.

5 But my understanding is in most cases for us in
6 Flint, there's these two sides.

7 Q. Two sides.

8 A. I just -- you were asking me about that. I wanted to
9 state what I understood. So one could not observe the public
10 service line, to my knowledge.

11 Q. So at that point, you had a resident of Flint who had very
12 high lead level results, and you knew about it?

13 A. Yes.

14 Q. When you think back to the February 18 meeting with VNA,
15 they didn't mention any lead service lines or lead test
16 results, high lead test results, correct?

17 A. Correct.

18 Q. And that, in addition to the February 9 email you received
19 by the University of Michigan Flint, was the second instance of
20 lead being found at a high level in Flint that you knew of,
21 correct?

22 A. Yes.

23 Q. And you knew that this Flint River water had been running
24 through the pipes of Flint, the distribution system, in late
25 April of 2014?

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1 A. Yes.

2 Q. In May of 2014. In June of 2014. July, August,
3 September, October, November, December.

4 All the way up until March of 2014, correct?

5 A. Yes.

6 Q. And now lead is cropping up, correct?

7 A. Yes.

8 Q. And you didn't do anything on that day to find out whether
9 there was lead at other houses; is that correct?

10 A. That's what I was asking Mr. Croft about. I mean, you
11 noted this line here from Elizabeth Murphy. I understood that
12 the city was, you know, with Ms. Walters looking at doing
13 additional testing.

14 So I understood that from Mr. Croft. We had talked
15 about that.

16 Q. And you talked about it on March 2?

17 A. I don't recall specific date. But it is right about that
18 same time.

19 Q. This was a priority to you, correct?

20 A. Yes. I was making the point to ask Mr. Croft
21 approximately every week about this case.

22 Q. About this case.

23 A. About the case of Ms. Walters, yes.

24 Q. Did you ask him about the case of all the other citizens
25 of Flint who also were receiving Flint water?

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1 MR. STERN: The cases? Objection.

2 BY MR. CHRISTIAN:

3 Q. Did you ask him whether there was testing going on for
4 other Flint residents who might also have a high level of lead
5 coming in through the taps of their homes?

6 A. I remember at that time being told that they were looking,
7 that this was an unusually long service line. The water
8 service center, which maintains those records, I think was
9 looking.

10 And there were -- you know, they were trying to see
11 if there were a few other houses that had that same kind of
12 exceptionally long service line.

13 That's -- so testing around the house and the length
14 of service line. That's what I remember us discussing in, you
15 know, probably those couple of weeks.

16 Q. Okay. So in your next weekly meeting after learning of
17 this March -- receiving this March 2 email, your next weekly
18 meeting, you talked with Mr. Croft about Ms. LeeAnne Walters's
19 lead test results, correct?

20 A. The conversation Mr. Croft and I were having were, like,
21 informal.

22 Q. Informal?

23 A. Like he -- like he -- I'd grab him for a minute, and we'd
24 sit down in my office. At this point, he's reporting to the
25 city administrator, Natasha Henderson.

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1 So my primary information about this was coming from
2 those brief conversations with Mr. Croft that I believe
3 occurred about once a week.

4 Q. Okay. So at that point in time, you were getting informal
5 information.

6 You did not have a more important matter on your desk
7 than the health and safety of Flint residents at that time; is
8 that correct?

9 A. Ever. Correct, yes.

10 Q. And you were content to only have informal meetings with
11 Mr. Croft at that point in time?

12 A. Well, each week I was hearing the -- you know, the steps
13 and the new information, and I believed the city was making
14 good progress. I mean, it is something that I look back on. I
15 question myself about it. But that's what I was understanding
16 at the time.

17 Q. So let's look at Tab 28, which has been premarked for
18 identification as VNA trial Exhibit 2665.

19 Do you recognize that as an attachment to the email
20 from -- that was forwarded from Mr. Fonger?

21 A. I saw that text. I don't remember seeing that.

22 Q. Well, let's look at the -- you said, "that text"?

23 A. I'm sorry. I meant the text of the email.

24 Q. Sure.

25 A. The text of the email said there was an attachment. I

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1 didn't -- I didn't remember at the time looking past the email.

2 MR. CHRISTIAN: Your Honor, we move to admit
3 Exhibit 2665 into evidence.

4 MR. STERN: We object.

5 THE COURT: Yeah. He's never seen this before, at
6 least not at the time of the events. Perhaps you would use a
7 different witness to have it admitted.

8 BY MR. CHRISTIAN:

9 Q. So a couple more questions about that, about the actual
10 email.

11 A. Yes.

12 THE COURT: And which exhibit is the email?

13 MR. CHRISTIAN: We'll go back to Tab 27.

14 THE COURT: Okay. Thank you.

15 MR. CHRISTIAN: Exhibit 1401.

16 BY MR. CHRISTIAN:

17 Q. So you've been a manager, you've managed people, at least
18 from 2009 to 2015, correct?

19 A. Yes.

20 Q. And when you manage people, you have regularly scheduled
21 meetings with people, some people, correct?

22 A. Yes.

23 Q. And have you ever had a time when you have a high priority
24 that causes you to have greater frequency of meetings with
25 someone?

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1 A. Yes.

2 Q. Did you demand to have more frequent meetings with
3 Mr. Howard Croft when you knew that at least one resident of
4 Flint had lead in the tap water at a high level?

5 A. So I was making a point to speak with Mr. Croft about once
6 a week like we have described. I was meeting, at this time,
7 once a week with the executive staff, which would have been
8 individuals on this email chain, and sometimes a few others
9 were invited. Chief of police, occasionally.

10 I'm just thinking through. I don't recall feeling
11 like I needed more meetings at that time. I don't recall
12 requesting a meeting that was, you know, turned down or not
13 scheduled.

14 Q. So did there come a time when there was something called a
15 Flint's Technical Advisory Committee, came into being?

16 A. Yes.

17 Q. And that was early March of 2015?

18 A. That sounds about right. I think we had this discussion
19 with the Flint -- the community water quality, as well. You
20 know, that was something I had been working on for some time
21 for some few weeks.

22 So that sounds like the right date for the first
23 meeting, right around that time.

24 Q. So I'm showing you -- please turn to Tab 19.

25 Were you a recipient of this email?

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1 A. Yes.

2 Q. And I may not have stated, but it's marked for VNA trial
3 Exhibit 1516.

4 And the subject -- so did you see your name on that
5 email?

6 A. Yes.

7 MR. CHRISTIAN: And so, Your Honor, I move to admit
8 VNA Exhibit 1516 into evidence.

9 MR. STERN: No objection.

10 MR. ERICKSON: No objection.

11 THE COURT: Okay. It's received.

12 (VNA Exhibit No. 1516 Admitted Into Evidence.)

13 BY MR. CHRISTIAN:

14 Q. Now, the subject line of this email is "Tech Committee
15 Follow-Up"; is that correct?

16 A. Yes.

17 Q. And the date of this email is Thursday, March 5 of 2015;
18 is that correct?

19 A. Yes.

20 Q. And let's go through the recipients of this email.

21 So Brent Wright?

22 A. Flint water plant supervisor.

23 Q. Daugherty Johnson?

24 A. City of Flint utilities director.

25 Q. Donna Cole?

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1 A. I'm sorry. That name's just not ringing a bell.

2 Q. Howard Croft?

3 A. City public works director.

4 Q. James Henry?

5 A. Environmental health for Genesee County Health Department.

6 Q. Mike Wright?

7 A. Mike Wright...

8 THE COURT: It says J. Mike --

9 BY MR. CHRISTIAN:

10 Q. J. Mike. Thank you, Your Honor.

11 A. Maybe there's something else that says who he is. I know
12 I've heard that name, but I can't recall.

13 Q. John O'Brien?

14 A. Senior staff with the Genesee County Drain Commissioner's
15 office.

16 Q. Kirk Smith?

17 A. Executive director of the Greater Flint Health Coalition.

18 Q. Larry Kohler?

19 A. mcc.edu is Mott Community College. I believe he was what,
20 you know, they called a plant or facilities manager,
21 supervisor, something along those lines.

22 Q. Laura Sullivan?

23 A. Kettering University professor. Kettering University
24 located in Flint.

25 Q. Michael Glasgow?

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1 A. City of Flint.

2 Q. Mike Lane.

3 A. I'm drawing a blank on that one, too. I know the name is
4 familiar, but I can't place it.

5 Q. Mike Prysby.

6 A. Michigan Department of Environmental Quality.

7 Q. You mentioned Natasha Henry a moment ago?

8 THE COURT: Henderson.

9 MR. CHRISTIAN: Henderson. Thank you.

10 A. City of Flint administrator.

11 Q. Norbert Birchmeier?

12 A. That one, I don't remember.

13 Q. Pete Levine or Levine?

14 A. Executive director of the Genesee County Medical
15 Association.

16 Q. Rob Nicholas of Veolia?

17 A. Yes.

18 Q. Rosejo -- r-o-s -- Rosejo?

19 A. Right. So Dr. Joan Rose, Michigan State University.

20 Q. Russell Hudson?

21 A. I'm drawing a blank.

22 Q. Samir Matta?

23 A. He's with an engineering firm that did a fair amount of
24 work with the City of Flint. I'm sure it's a record somewhere.
25 There's a list somewhere of these individuals with titles.

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1 Q. Sure, sure.

2 A. So with an engineering company.

3 Q. Warren Green?

4 A. LAN.

5 Q. And Elizabeth Murphy?

6 A. Assistant to the emergency manager.

7 Q. So at this meeting, you had quite an assembly of water
8 expertise; is that fair to say?

9 A. Yes.

10 Q. And was that part of the purpose for this assembly?

11 A. Yes. This was one of the steps that we were taking as a
12 city engaging Veolia, creating a broad community water advisory
13 committee and then this technical, kind of, you know, water
14 treatment engineering.

15 So these are people who have technical or work
16 experience or credentials around water.

17 Q. So we're going to back out a little bit and look at the
18 body of the email.

19 So it begins, "All, I want to thank everyone for
20 attending our first technical committee meeting yesterday. By
21 all measurements, this was a very successful first gathering.

22 "I am forwarding everyone an electric copy of the
23 materials chaired yesterday, including the presentation by
24 Veolia.

25 "As for next steps, I'm looking for literature form

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1 Dr. Rose and from Michael Wright of the EPA to come within the
2 next day or two. I also would like to have specific questions
3 that anyone feels should be included in a bullet point list so
4 that we can move quickly to generate the best responses." [As
5 read].

6 Did I read that correctly?

7 A. Yes.

8 Q. So if this email sent on March 5 and refers to a meeting
9 the prior day, this is approximately March 4 that the meeting
10 occurred?

11 A. Yes. I believe it did.

12 Q. Okay. So tell me what you recall about the agenda for
13 that meeting.

14 A. I was -- I was at that meeting to show that, you know,
15 myself, and others -- I mean, myself, the emergency manager
16 were engaged and valued the contributions that these
17 individuals -- you know, they're taking time. We had this
18 meeting in this committee room, one of the committee rooms.
19 The larger room for the city council.

20 The door was open. You asked me about the agenda.
21 Sorry. I'm trying to prompt my memory. Well, I know the
22 Veolia presentation that's mentioned there in the attachments
23 was a part of those discussions.

24 I think there were some of the same points that had
25 been shared with the Public Works Committee, as I recall. I

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1 don't -- I don't remember more about an agenda. There
2 probably were welcome and introductions. It's the first time
3 these people were getting to know each other.

4 I think we had a couple on conference call. Maybe
5 there's another document. But I don't --

6 Q. So this meeting occurred two days after that email from
7 Ron Fonger about the lead, high lead test results?

8 A. Yes.

9 Q. It occurred two days after a discussion of conducting more
10 tests to see if other homes had high lead content in the tap
11 water, correct?

12 A. Yes.

13 Q. This was a good opportunity to talk about high lead test
14 results.

15 Would you agree?

16 A. In retrospect, I very much agree.

17 Q. But you didn't bring it up, did you?

18 A. I did not.

19 Q. You remember testifying yesterday near the end of your
20 testimony that the technical advisory group was involved with
21 switching back to the DWSD?

22 A. Yes.

23 Q. And you remember when you were testifying about VNA, you
24 said that if they would have mentioned lead in their report,
25 maybe this could have gone to the Technical Advisory Committee

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1 sooner?

2 A. Yes.

3 Q. If you would have mentioned it in March of 2015, it would
4 have gone to the Technical Advisory Committee sooner; is that
5 correct?

6 A. Yes. If I would have mentioned it, there would have at
7 least been a discussion about it. You know, if I would have
8 said, "This is what I've talked about with the public works
9 director."

10 I think that could have made a difference.

11 Q. And one of the ways it would have made a difference is
12 that Warren Green could have told you what he thought about it,
13 correct?

14 A. Yes.

15 Q. And the representatives of the DEQ could have told you
16 their perspective on it, correct?

17 A. Yes.

18 Q. And everyone else in that meeting would have had the
19 opportunity to contribute to the understanding of the mayor of
20 Flint about lead, correct?

21 A. Yes. And, you know, whatever was on or not on the agenda,
22 you know, my recollection was there was conversation. You
23 know, there was free flowing dialogue. S.

24 O I think what you just asked is fair, is accurate.

25 Q. So I remember you yesterday read your message from October

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1 of 2015 from your notes, handwritten notes, about the Flint
2 River crisis.

3 Do you recall that?

4 A. Yes.

5 Q. And you had some advice from a political advisor on there,
6 correct?

7 A. Yes. And friend, yes.

8 Q. And friend. To communicate not necessarily as the mayor
9 but as a human, correct?

10 A. Yes.

11 Q. When you learned of LeeAnne Walters's high lead test
12 results, you were a mayor and a human, correct?

13 A. Yes.

14 Q. And as a human, was that on your heart when you met with
15 these people two days later in March of 2015?

16 A. I remember that I was interested in hearing what these
17 individuals who were invited to the table had to share from
18 their perspective. I was in communication with Mr. Croft about
19 that case.

20 And I understood the city was taking, you know, good
21 steps to try to address that case.

22 Q. Let me make sure I understand.

23 You said they were taking good steps?

24 A. Yes.

25 Q. Tell me about those good steps.

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1 How many houses did they test between March 2 and
2 March 9 of 2015?

3 A. I don't know the answer.

4 Q. And how many houses did they test between March 9 and
5 March 16 of 2015?

6 A. I don't know the answer.

7 Q. And if I continue, will your answer continue to be the
8 same?

9 A. Yes. I do not know the answers today of how many
10 households were tested around Ms. LeeAnne Walters's house.

11 Q. And you didn't ask the question either, did you?

12 A. I don't know. I don't recall a specific incident of
13 asking for that number.

14 Q. I'd like to turn to Tab 58, which is VNA's Exhibit 5454M.

15 Do you recognize what has been premarked for --
16 premarked as Exhibit 5454M?

17 A. I don't remember being familiar with it. I'm not sure. I
18 don't know.

19 Q. So are you familiar with the Coalition for Clean Water?

20 A. It sounds familiar.

21 Q. So after you had the knowledge on March 2 of 2015 of
22 Ms. LeeAnne Walters's test results, as well as the Technical
23 Advisory Committee meeting, did there come a time in that month
24 when you went on television to drink water from the Flint
25 River?

1 A. There was the "Ask the Mayor" show with Channel 5. I'm
2 not sure the date.

3 Maybe we can refresh me of the date?

4 Q. One moment. I'll see what we can do here. And while
5 we're waiting, I don't want to have everyone sitting watching,
6 so --

7 A. I did that show every week.

8 Q. So you did it every week?

9 A. Yeah. I did "Ask the Mayor" every week so.

10 Q. And do you recall how many times you actually went on the
11 "Ask the Mayor" show and drank the water on television?

12 A. There was only once.

13 Q. Only once.

14 A. Yeah.

15 Q. Do you remember if it was before or after you learned of
16 Ms. Walters's high led result?

17 A. I think we should just look up the date.

18 THE COURT: Well, let's go to a different area.

19 MR. CHRISTIAN: Sure.

20 THE COURT: Pressing on the gas pedal here.

21 MR. CHRISTIAN: We will proceed, Your Honor.

22 THE COURT: You can always come back to it. I'm not
23 precluding you from discussing.

24 MR. CHRISTIAN: Thank you, Your Honor.

25 BY MR. CHRISTIAN:

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1 Q. So in late June of 2015, you learned the name Miguel
2 Del Toral, didn't you?

3 A. Yes. That day sounds about right.

4 Q. And I'm going to ask you to look at Tab 31, VNA Exhibit
5 1843. It is premarked -- oh, I did say it.

6 So do you recognize this?

7 A. Yes.

8 MR. CHRISTIAN: Your Honor, we move to admit VNA
9 Exhibit 1843 into evidence.

10 MR. STERN: No objection.

11 MR. ERICKSON: No objection.

12 THE COURT: Okay. It's received.

13 (VNA Exhibit No. 1843 Admitted Into Evidence.)

14 THE COURT: And could you remind me, did you offer
15 5454M?

16 MR. STERN: It was not offered, Your Honor.

17 THE COURT: All right.

18 MR. STERN: That's the last exhibit we just looked at
19 with the coalition?

20 THE COURT: That's right. Okay.

21 MR. STERN: That was not offered.

22 THE COURT: Okay. Go ahead with your question.

23 BY MR. CHRISTIAN:

24 Q. Now, Exhibit 1843 is a June 24, 2015, memorandum; is that
25 correct?

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1 A. Yes.

2 Q. And it is from a gentleman named Miguel Del Toral; is that
3 correct?

4 A. Yes.

5 Q. And the subject of that email, let's take a look at it.
6 It says, "High Lead Levels in Flint, Michigan-Interim Report."

7 Did I read that correctly?

8 A. Yes.

9 Q. And so at this point in time in June of 2015, Veolia was
10 no longer in Flint; is that correct?

11 A. Correct.

12 Q. In fact, they finished their work roughly in March of
13 2015, correct?

14 A. Correct.

15 Q. And so let's look at the first paragraph. And I'm going
16 to read it.

17 "The purpose of this interim report is to summarize
18 the available information regarding activities conducted to
19 date in response to high lead levels in drinking water
20 reported by a resident in the City of Flint, Michigan.

21 "The final report will be submitted once additional
22 analyses have been completed on pipe and water samples."

23 Did there come a time where you understood what
24 prompted Mr. Del Toral to send this memo?

25 A. I understood that Ms. LeeAnne Walters had reached out

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1 directly to the EPA. Mr. Miguel Del Toral was a staff person
2 for the EPA --

3 Q. Okay.

4 A. -- Environmental Protection Agency.

5 Q. So let's go down to the next paragraph.

6 "Following a change in the water source, the City of
7 Flint has experienced a number of water quality issues
8 resulting in violations of national primary drinking water
9 regulations, including acute and nonacute coliform maximum
10 contaminant level violations and total trihalomethanes.

11 "TTHM, MCL violations as follows?"

12 Now, did I read that with the exception of missing
13 some parentheses there?

14 A. Yes.

15 Q. Next group there with the bullet -- with the list.

16 So, "Acute coliform MCL violation in August 2014.
17 Monthly coliform MCL violation in August 2014. Monthly
18 coliform MCL violation in September 2014. Average TTHM MCL
19 violation in December 2014. Average TTHM MCL violation in
20 June 2015."

21 Did I read those correctly?

22 A. Yes.

23 Q. In your capacity as mayor, were you aware of each and
24 every one of these violations?

25 A. Yes.

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1 Q. Next paragraph, please.

2 "In addition as of April 30, 2014, when the City of
3 Flint switched from purchasing finished water from the City of
4 Detroit to using the Flint River as their new water source, the
5 City of Flint is no longer providing corrosion control
6 treatment for lead and copper."

7 Did I read that correctly?

8 A. Yes.

9 Q. So let's go to the next paragraph.

10 "A major concern from a public health standpoint is
11 the absence of corrosion control treatment in the City of Flint
12 for mitigating lead and copper levels in the drinking water.

13 "Recent drinking water sample results indicate the
14 presence of high lead results in the drinking water, which is
15 to be expected in a public water system that is not providing
16 corrosion control treatment.

17 "The lack of any mitigating treatment for lead is of
18 serious concern for residents that live in homes with lead
19 service lines or partial lead service lines, which are common
20 throughout the City of Flint."

21 Did I read that correctly?

22 A. Yes.

23 Q. So I've asked you about whether you conducted any research
24 about corrosion control.

25 And you told me that you didn't, after you saw that

1 word "appears a priority" in Veolia's final report, correct?

2 A. Correct.

3 Q. And you pointed out that you read it forwards and
4 backwards and did not see the word "lead," correct?

5 A. Correct.

6 Q. And in this report, if you go back to the bottom of the
7 prior page, the previous page, the page before, it mentions
8 corrosion control.

9 And then on the next page it mentions lead, correct?

10 A. Yes.

11 Q. It connects corrosion control and lead, correct?

12 A. Yes.

13 Q. So at this point in time, there was no mistake in your
14 mind that the lack of corrosion control could result in high
15 lead levels in the citizens' of Flint drinking water; is that
16 correct?

17 A. No. That's not how I thought about it.

18 Q. Okay. So we talked about your being a very literate
19 person. You're a smart guy.

20 MR. STERN: Is that a question?

21 MR. CHRISTIAN: Yes, he said he was smart earlier.

22 MR. STERN: The question is, "Are you a smart guy"?

23 THE COURT: We've got that fully understood.

24 BY MR. CHRISTIAN:

25 Q. So this paragraph -- let's go back -- let's go through it.

1 So presence of high lead results.

2 In the same paragraph corrosion control?

3 A. Yes.

4 Q. You read this at the time you received it?

5 A. Yes.

6 Q. At that time, you did not understand lead in water to be
7 connected to the lack of corrosion control?

8 A. Right. This is when I started to see that connection, and
9 I made an inquiry with the regional administrator for the EPA
10 about this -- what I read and understood was an interim report.

11 Q. Interim report?

12 A. Yeah.

13 Q. So at this point, it wasn't final in your mind, correct?

14 A. I mean, I read it. I saw that it was from one staff
15 person. I took it seriously. I saw it was interim. And my
16 personal point of contact that I had at the EPA, from my
17 earlier inquiry that we looked at, was the regional
18 administrator Dr. Susan Hedman.

19 So there's a -- you know, there's an email exchange,
20 and her and I talked on the phone about -- about this when I
21 became aware of it.

22 Q. So when you became aware of this text connecting or
23 mentioning high lead test results and corrosion control in the
24 same paragraph, did you go to Howard Croft and ask about the
25 results of the additional lead testing that began as a result

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1 of LeeAnne Walters's high lead test result that you learned
2 about in February of 2015?

3 A. No, I don't recall that I did that.

4 Q. Did you reach out to anyone else in the City of Flint
5 government to inquire about the progress of the lead testing
6 that was occurring in the City of Flint in the aftermath of
7 Ms. LeeAnne Walters's high lead test results?

8 A. I don't know. I'm not recalling anything specific. I
9 know it was -- I know it was discussed between myself, the city
10 administrator. I'm just not recalling anything specific.

11 Q. So in your role as mayor and as a manager, can you tell me
12 one action step that you took with respect to the employees of
13 the City of Flint to learn more about the test results that
14 would follow Ms. LeeAnne Walters's high lead test results?

15 A. I don't remember that I asked or saw specific results
16 until I learned of the order from the MDEQ to the City of Flint
17 for the need to add the corrosion control in early September
18 2015.

19 Q. So is it fair to say in the -- on the day that you
20 received this report, you didn't do anything in the City of
21 Flint to learn more about it?

22 MR. STERN: Objection to form. "In the City of
23 Flint." He said he called the EPA administrator.

24 MR. CHRISTIAN: Thank you. I will be more specific.

25 THE COURT: Do you mean when he was physically in the

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1 City of Flint, what did he do reaching out to the White House
2 and all these things?

3 MR. CHRISTIAN: No. I will be more clear, because
4 clearly I'm not.

5 THE COURT: Okay. I'm not following.

6 BY MR. CHRISTIAN:

7 Q. So with respect to any City of Flint employee, you took no
8 actions on the day you received this report in reaction to your
9 receiving this report?

10 A. I don't remember if it was this day. Cause I didn't get
11 this memorandum directly. This was learning about it from
12 Mr. Ron Fonger that we had discussed earlier.

13 I remember -- I'm just generally remembering a
14 follow-up with the city administrator and director of public
15 works. And I remember making the phone call to an email to
16 Dr. Hedman. That's -- so anything else I were asked about, I
17 would say no.

18 Q. So when you saw this report, you didn't go back to VNA and
19 say, "I read your final report, and now the EPA is telling me
20 that lead and corrosion control are connected," did you?

21 A. I did not.

22 Q. You didn't go to Warren Green and say, "You've done work
23 for us. Is there a connection between corrosion control and
24 lead," did you?

25 A. No.

1 Q. You didn't call the DEQ and ask them about the
2 relationship between corrosion control and lead, did you?

3 A. I did not.

4 Q. And this was late June-early July, of 2015?

5 A. Yes. It was right around that time. We'd have the email
6 exchange with Dr. Hedman. That would give a date for that
7 interaction.

8 Q. Thank you. So when you testified yesterday, you said that
9 you read the VNA report back and forth. And you testified that
10 if they had mentioned the word "lead," you would have done
11 something different, correct?

12 A. Yes.

13 Q. You said, "I guarantee you," didn't you?

14 A. Yes.

15 Q. The EPA, Miguel Del Toral put "lead" in his report,
16 correct?

17 A. Yes.

18 Q. "Lead" occurs in this report, the word, more than 20
19 times; is it fair to say?

20 A. Yes.

21 Q. And at that time, you did not do anything to switch back
22 to the DWSD, did you?

23 A. I didn't take any action towards DWSD at the time.

24 Q. You didn't even start studying whether it was plausible to
25 return to the DWSD, did you?

1 A. Not at that time.

2 Q. Did you write the president at that time?

3 A. No.

4 Q. Did you write the governor at that time?

5 A. No. The governor came a little bit later.

6 Q. Months later, correct?

7 A. Um-hum.

8 Q. So as of early July, 2015, you had corrosion control, you
9 had lead, you had a report saying that you had danger, correct?

10 A. Yes.

11 Q. And you had already seen at least one of your citizens,
12 one of your constituents suffering -- or with a high lead test
13 result coming from the water in their home, correct?

14 A. Yes.

15 Q. And you did nothing at that point in time, correct?

16 MR. STERN: Objection. That misstates his testimony.

17 THE COURT: Sustained.

18 MR. STERN: He named ten things he did.

19 THE COURT: He listed the things he did. So it's
20 sustained.

21 BY MR. CHRISTIAN:

22 Q. You did not start working on changing the water source,
23 did you?

24 A. I did not.

25 Q. You did not ask for test results, correct?

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1 A. Not at that time.

2 Q. And you did not enlist the support or help of any external
3 party as of July 1, 2015, to deal with lead in water in Flint,
4 correct?

5 A. I had a direct interaction with the EPA regional
6 administrator, who -- I mean, Mr. Del Toral is in that region.

7 Q. Okay. So you didn't tell Mr. Croft --

8 MR. STERN: Asked and answered. Now, he's just
9 badgering the witness. I mean --

10 THE COURT: Sustained. Let's go to the next area.

11 Do you have the communication with the EPA
12 administrator? We could place the date that way. If that's
13 what you're looking for, Mr. Christian.

14 MR. CHRISTIAN: What's that, Your Honor?

15 THE COURT: Do you have the communication from
16 Mr. Walling to the EPA administrator?

17 MR. CHRISTIAN: I do. I'm not looking for that, Your
18 Honor.

19 THE COURT: Okay.

20 MR. CHRISTIAN: I'm looking for something else.

21 THE COURT: Okay.

22 MR. CHRISTIAN: We will get to that, Your Honor.

23 THE COURT: Okay.

24 MR. CHRISTIAN: We will get to that. It's going to
25 take a little while when you get into it --

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1 THE COURT: Well, let's use our five minutes.

2 MR. CHRISTIAN: Okay. We will use it. We will use
3 it. So, Your Honor, I can -- I have some additional exhibits.

4 THE COURT: Okay.

5 MR. CHRISTIAN: And we're happy to pass them out.

6 May we approach?

7 THE COURT: Yes.

8 MR. CHRISTIAN: Okay.

9 BY MR. CHRISTIAN:

10 Q. So, Mr. Walling, please turn to Tab 19 of the binder I
11 just provided to you. You mentioned your --

12 MR. STERN: Objection.

13 MR. CHRISTIAN: Would you please take a look --

14 THE COURT: Just a minute.

15 When there's an objection, please wait for the
16 ruling.

17 MR. STERN: So this is subject to one of the Court's
18 motions in limine. And I understand there's been testimony
19 that hasn't been elicited that has warranted some responses.
20 But there's a specific motion in limine that addresses.

21 THE COURT: There is. So let's move to your next
22 exhibit. We can discuss this at another time. Two minutes.
23 They call me "lead foot Levy" for a reason. Got to keep the
24 gas on here.

25 THE WITNESS: You might want to rethink that, Judge.

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1 THE COURT: It's not good. I try not to mention that
2 when I'm stopped on the side of the road.

3 Okay. Well, I think we're at a very good point to
4 take a break.

5 So what we'll do is take a break for today. We will
6 be back in session on Monday 9:00 A.M. Pedal to the metal in
7 our case.

8 Please remember everything I told you and enjoy the
9 weekend. I don't know about the weather. It's not looking
10 great.

11 But please rise for the jury.

12 (Jury Out)

13 THE COURT: Okay. Mr. Walling, you are free to
14 leave. And it sounds like we'll need you back on Monday. I'm
15 sorry.

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 THE WITNESS: I will be here.

19 THE COURT: Okay. Great. Thank you. So please be
20 seated. Okay.

21 And. Okay. So, Mr. Christian, I want to ask you
22 about a couple of exhibits. You were going to tell us --

23 MR. CHRISTIAN: Right.

24 THE COURT: -- what VNA Exhibit 1647, what the number
25 is of the previously exhibit -- received rendition of it.

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1 MR. CHRISTIAN: And it's my understanding, Your
2 Honor, that was the previously accepted number for the
3 exhibit.

4 THE COURT: Oh, that's -- it was VNA's exhibit number
5 through plaintiffs' case.

6 MR. CHRISTIAN: That's --

7 THE COURT: Okay. Good.

8 MR. CHRISTIAN: 1647. That's what we understand.

9 THE COURT: Okay. It might have been Plaintiffs'
10 1647.

11 MR. ERICKSON: Your Honor, I think it's actually been
12 admitted twice. Once under the plaintiffs' number and once
13 under the VNA number.

14 THE COURT: Okay. Good. Then it can be located.

15 I'm just curious, I have lost track. Kelly
16 Rossman-McKinney, who was she -- who contracted with her? Was
17 it the --

18 MR. STERN: She was working for both Veolia and the
19 city separately.

20 THE COURT: That's what it was looking like, and I
21 was getting confused. I just wasn't totally -- I'm sure it's
22 crystal clear to the jury, all of this.

23 Okay. So then we had motion in limine 505, if I'm
24 not mistaken, which related to -- it was plaintiffs' motion in
25 limine that was granted regarding -- well, you're familiar

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1 with it.

2 MR. CHRISTIAN: Absolutely, Your Honor.

3 THE COURT: Yeah. And so how does this exhibit
4 comport with that, with the Court's ruling?

5 MR. CHRISTIAN: So, Your Honor, I do believe that
6 Mr. Stern elicited testimony from the witness about drinking
7 water in Flint.

8 And so we will go to the transcript and point that
9 out for Monday. But we believe he brought up the subject of
10 drinking water and his family drinking water in Flint.

11 MR. MAIMON: I welcome counsel for VNA to look at the
12 transcript. Because Mr. Stern did not elicit any such
13 testimony.

14 Mr. Walling volunteered. That subject was very
15 different than if we would have elicited to have then arguably
16 opened the door.

17 Since Mr. Walling did raise it, we didn't want to
18 object to at a certain point counsel reiterating it, because
19 it was volunteered by the witness. But we believe that the
20 exhibit that they wanted to put in as well as any testimony on
21 something like that does violate the MIL, and we would object.

22 MR. STERN: Your Honor, I just want to note that in
23 my examination of him, there was a document I was looking at,
24 and there was some words in the document that referenced him
25 drinking the water.

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1 And I specifically avoided asking him about that
2 during the examination to avoid violating the Court's order.

3 THE COURT: Okay.

4 MR. MAIMON: The transcript will tell us.

5 MR. CHRISTIAN: And if, Your Honor -- if we don't
6 find it, we will -- we'll drop this one. And if we do find
7 it, we'll show it to the Court.

8 THE COURT: And if you do find it, and it's as
9 Mr. Maimon and Mr. Stern represent it to be, that he offered
10 it without a question of, "Did you and your family drink the
11 water," then do you agree that the motion in limine needs to
12 be -- that plaintiffs have not opened the door such that the
13 Court's order should be set aside?

14 MR. CHRISTIAN: Well, we'll certainly look into that,
15 Your Honor. And if we do believe that notwithstanding that,
16 we have a viable and legal and supported reason for
17 introducing it. We still would like to introduce it.

18 THE COURT: I'm not sure I'm following. But it's not
19 important for me to follow that. That is the least of our
20 concerns, so I won't ask.

21 MR. CAMPBELL: There is the new Friday, Judge.

22 THE COURT: What?

23 MR. CAMPBELL: Thursday is the new Friday. I'm just
24 feeling like Friday.

25 THE COURT: Yeah. We're all tired.

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1 MR. CAMPBELL: I'm not exactly sure what the exhibit
2 is that's being offered. But I just wanted to offer a comment
3 about the motion in limine.

4 As I recalled that motion, it had to do with people
5 like I think it was specifically as to President Obama --

6 THE COURT: Well, it was President Obama, certainly.
7 But I'm not sure if it was that one.

8 But it was also government officials. It was whether
9 VNA and LAN were drinking the water at the drinking fountains
10 at the city hall and whether government officials.

11 But I have all the motion in limine decisions here.
12 But I don't know if I have them all.

13 MR. CAMPBELL: What I would suggest, Judge, is if we
14 could take an opportunity to review it and comment on Monday.
15 I don't have it with me.

16 THE COURT: Okay.

17 MR. MAIMON: Obviously, we should all review it. But
18 I don't think commentary is necessary. There's a ruling.
19 We've abided by the ruling. And I think that the time for
20 reargument or reconsideration is over.

21 MR. CAMPBELL: But, you know, the witness said it on
22 the witness stand. And I think it really goes to issues about
23 why somebody was doing it.

24 Mayor Walling was on the TV doing it for basically
25 governmental purposes. I mean, he was trying to show the

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1 people that, "Hey, I do it. And it's not like President Obama
2 coming in on a photo op. This is different."

3 THE COURT: Okay. Well, let me take a look back at
4 the opinion and order on this issue.

5 MR. CHRISTIAN: And, Your Honor, I just want to state
6 for the record, I believe I showed the witness handwritten
7 notes from a meeting, I think they may have been introduced
8 through Depin Chen, but they were, I think, Rob Gnagy's
9 handwritten notes.

10 I want to clarify that on the record however I need
11 to --

12 THE COURT: What exhibit number?

13 MR. MAIMON: I don't think there was any substantive
14 testimony about it, because he said he didn't recognize it.

15 THE COURT: He didn't recognize it. It wasn't
16 admitted. So it doesn't matter.

17 MR. CHRISTIAN: Okay.

18 THE COURT: But thank you for the clarification.

19 MR. CHRISTIAN: Certainly.

20 MR. CAMPBELL: Your Honor, you had asked me probably
21 at least twice about Plaintiffs' Exhibit 0460, which is a big
22 long list.

23 THE COURT: Right.

24 MR. CAMPBELL: I gave Mr. Maimon what I suggested for
25 redactions. He had wanted to take a look at it. Might see if

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1 there was something else that he might want to include. I
2 just wanted to let Your Honor know that we're working on it,
3 if that's okay.

4 THE COURT: Okay. That's great. Thank you.

5 Okay. So Monday we're back at 9:00 A.M. And I just
6 would encourage everyone to keep your eyes on our jury and on
7 the clock. Because if we're here together in August, it won't
8 help anyone. It won't help any of you or your clients or
9 anyone else here.

10 So I just ask that everybody consider, take that into
11 consideration as you prepare your examinations.

12 MR. MAIMON: So in that regard, can we inquire --
13 because obviously if Mr. Walling is done on Monday before the
14 end of the day, we'll have another witness available. But I'd
15 hate to bring somebody from out of Ann Arbor to come in only
16 to have them sit and then have to go back home.

17 And I'm not looking to cut short anybody's
18 examination.

19 THE COURT: How much -- about how much longer do you
20 think --

21 MR. CHRISTIAN: I would hope to be done by the first
22 break, Your Honor, depending upon when we start.

23 THE COURT: We will start at 9:00 o'clock, assuming
24 the jurors are here.

25 So you'll be going until 10:15?

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1 MR. CHRISTIAN: That's my estimation, Your Honor.

2 THE COURT: Thank you, Mr. Christian. Thank you.

3 MR. ERICKSON: Your Honor, I'm going to guess that I
4 have, you know, two or three hours. But, you know, I can't --

5 MR. MAIMON: That tells us all we need to know.

6 THE COURT: Yeah. So that will take us through the
7 full day on Monday.

8 MR. CAMPBELL: If I may ask, assuming we have a full
9 day on Monday with Mr. Walling, the schedule for the remaining
10 three days. I know we have Mr. Del Toral.

11 MR. MAIMON: Right. So I had marked down the
12 possible witnesses for next week.

13 THE COURT: Oh. Let me write this down. Just a
14 minute. Okay.

15 MR. MAIMON: Mr. Walling, obviously. Ms. Teed we had
16 to reschedule from today. But we're still looking for her.
17 Ms. White, whose deposition is ready to be played. And we've
18 resolved all differences, so the Court doesn't need to rule on
19 anything. Mr. Del Toral. Ms. Wheeler. And Ms. Kelly. And
20 then we also have the Gnagy videotape.

21 MR. CAMPBELL: Thank you.

22 THE COURT: Okay.

23 MS. BUSH: Are those in the order at this moment that
24 you anticipate calling them?

25 MR. MAIMON: No.

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1 MS. BUSH: Okay.

2 THE COURT: Okay. Thank you. All right. I think
3 that's it.

4 MR. MAIMON: Thank you, Your Honor.

5 MR. STERN: Thank you. Your Honor, is there - will
6 there be nothing further regarding the Twitter account at this
7 point?

8 THE COURT: Well, let me ask. Is there anything that
9 you think the Court should be doing at this time?

10 MR. STERN: I mean, at a minimum, I think that the
11 defendants should be ordered to preserve the evidence as
12 requested in the email that I sent to them last night.

13 I believe there are clear, clear violations from -- I
14 mean, tweeting about counsel and calling them liars. It's --
15 whether it's coming from inside the courtroom or outside the
16 courtroom, it's coming from someone's client.

17 I couldn't imagine, I couldn't imagine a scenario
18 where we would hire a PR company to put out tweets about any
19 of these defendants and calling them liars in the tweets. I
20 think it's unbecoming of this proceeding, and I do think that
21 something needs to be done.

22 THE COURT: Did you get a response to your email?

23 MR. STERN: Just Mr. Mason's immediately upon me
24 sending it, saying he had nothing to do with it. I only
25 included them, because there were a number of tweets about

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1 Warren Green, as well.

2 And so it seemed to me like there could have been
3 collaboration. But I'll take Mr. Mason at his word. As to
4 VNA, I got zero response from anyone regarding my email as if
5 it had never been sent.

6 THE COURT: So, Ms. Bush, do you have any objection
7 to preserving the information that Mr. Stern requested be
8 preserved?

9 MS. BUSH: No. We already have.

10 THE COURT: Okay. All right. So it doesn't have to
11 be an order of the Court.

12 MS. BUSH: Your Honor --

13 THE COURT: And, I guess, Mr. Stern, in terms of the
14 rules of professional conduct applying to lawyers, we have a
15 representation that no lawyer was involved in this or
16 communicated with the PR firm?

17 MR. STERN: Well, we'll probably issue a subpoena.
18 This happens sometimes in cases where things like this become
19 part of the case.

20 And it may be that we get documents that allow us to
21 explore that further. It may be that we're permitted to ask
22 witnesses on the stand about it when they're brought in by
23 VNA.

24 But I'm happy they're going to preserve. We'll take
25 the steps that we need to actually get our hands on those

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1 documents. And then we'll assess if there's anything further
2 that we need from the Court.

3 THE COURT: Okay. I think that would be helpful.

4 MS. BUSH: Your Honor, we do have a problem. Because
5 Mr. Stern has been quoted in Law360 referring to -- I don't
6 remember if it was the clients or the employees of VNA or the
7 lawyers as -- VNA as liars.

8 And I'm happy -- I mean, I was hoping not to bring
9 that up.

10 THE COURT: And was that in response to an
11 interviewer's question.

12 MS. BUSH: I don't know.

13 MR. STERN: It was. I've got the quote here.

14 THE COURT: Okay.

15 MR. STERN: And I'd love to see where I called
16 anybody a liar.

17 MS. BUSH: I'll be happy to submit the Law360
18 article.

19 THE COURT: I don't know that -- you certainly can.
20 I don't want to --

21 MR. STERN: "A lawyer for the children, Corey Stern,
22 told Law360 on Friday, 'Our focus is on our clients, four
23 innocent kids who were poisoned by their water. The criminal
24 proceedings are a side show. Our only hope that what could
25 easily be a circus stays out of the kids' trial.'"

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1 That's also included in our public filings for the
2 most part. There's nothing I said there that implicates --

3 THE COURT: I think it's a different quote.

4 MR. CAMPBELL: It's a different one.

5 THE COURT: Where's the quote then?

6 MR. CAMPBELL: It's law -- I don't have it --

7 THE COURT: Okay.

8 MR. CAMPBELL: -- but I read it. It was this week.

9 THE COURT: Oh.

10 MR. CAMPBELL: There were, I think, two.

11 THE COURT: Why don't you submit it to me.

12 MR. CAMPBELL: Sure.

13 MS. BUSH: Will do. Thank you.

14 THE COURT: Thank you. And you can do that by
15 sending it to Guus. Thank you. All right. Safe travels,
16 everyone.

17 (Proceedings Concluded)

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20 CERTIFICATE OF OFFICIAL COURT REPORTER

21 I, Jeseca C. Eddington, Federal Official Court
22 Reporter, do hereby certify the foregoing 169 pages are a true
23 and correct transcript of the above entitled proceedings.

24 /s/ JESECA C. EDDINGTON
25 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

03/31/2022
Date